SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 56

INTERSTATE CIRCUIT, INC., APPELLANT,

vs.

CITY OF DALLAS.

No. 64

UNITED ARTISTS CORPORATION, APPELLANT,

vs.

CITY OF DALLAS.

APPEALS FROM THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

INDEX

	Original	Print
Record from the 44th Judicial District Court in and for Dallas County, Texas		
Plaintiff's original petition	3	1
Fiat	7	5
Answer in intervention of United Artists Corporation	8	6
Defendant's original answer	19	16
Trial amendment	32	28
Motion to strike answer in intervention	35	31
Plaintiff's first supplemental petition	38	34
Statement of facts—temporary injunction—February 17, 1966	40	36

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 24, 1967

	Original	Print
Record from the 44th Judicial District Court in and for Dallas County, Texas—Continued		
Statement of facts—temporay injunction—February 17, 1966—Continued		
Appearances	40	36
Colloquy between court and counsel re exhibits	42	37
Testimony of John Gilliland—		
direct	52	44
cross	77	63
redirect	90	72
James Robert Maceo—		
direct	93	74
cross	104	82
redirect	121	96
Frank Martin—		
direct	122	96
Colloquy between court and counsel	128	101
Reporter's certificate and counsel's approval	153	119
Plaintiff's Exhibits:	155	119
1—Ordinance No. 11284 of the City of Dallas	155	119
P-3—Letter application for classification of motion picture "Viva Maria" as "Suitable for Young Persons", presented by Interstate Circuit, Inc., dated January 24, 1966 to Dallas Motion Picture Classification Board	171	135
Exhibit P-8—attached—Review of movie "Viva Maria"	172	136
P-4—Minutes of the Dallas Movie Classification Board Meeting of February 9, 1966	173	137
P-5—Letter to Mr. Raymond Willie of Interstate Circuit, Inc., dated February 9, 1966 notifying him that the Dallas Motion Picture Classification Board had classified "Viva Maria" and "The Silencers" as "Not Suitable for Young Persons", from City Secretary, City of Dallas	175	140

	Original	Print
Record from the 44th Judicial District Court in and for Dallas County, Texas—Continued		
Plaintiff's Exhibits—Continued		
P-6—Letter from Van Alen Hollomon, Secretary of Interstate Circuit, Inc., dated February 11, 1966 of non-acceptance of Movie Board's classification of "Not Suitable for Young Persons" to Dallas Motion Picture Classification Board	176	142
P-9—Newspaper advertisement in the Dallas Morning News, dated Wednesday, February 16, 1966 advertising "Viva Maria" to be shown at Esquire Theater	177	145
Intervenor's Exhibit 1—Contract between United Artists Corporation and Interstate Circuit, Inc. with respect to the exhibition of "Viva Maria"	178	146
Intervenor's Exhibit 2—Affidavit of Russell L. Brentlinger, Branch Manager of United Artists Corporation, filed in Cause No. 66-1280-B, with reviews	180	148
Temporary injunction	186	155
Clerks' certificates (omitted in printing)	187a	156
Proceedings in the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas	188	157
Motion to advance on the docket	188	157
Order granting motion to advance	193	160
Order granting motion to exhibit the motion picture	193	160
Opinion, Dixon, Ch. J.	194	161
Concurring opinion, Bateman, J.	203	172
Judgment	209	178
Order overruling motion of appellant Interstate Circuit, Inc. for rehearing	209	179
Order overruling motion of appellant United Artists Corp. for rehearing	209	179
Record from the Supreme Court of Texas	211	180
Petitioner's motion to advance	211	180
Order refusing the applications for writs of error	216	182

	Original	Print
Record from the Supreme Court of Texas—Continued		
Supplemental motion for rehearing (omitted in printing)	218	183
Attachment—Chart of Ten Cases Before and After Interstate Circuit, Inc., Et Al. v. City of Dallas, Cause No. A-11490 with certificate of Clerk, Supreme Court of Texas	219	185
Order overruling the motions for rehearing	222	188
Supplemental proceedings in the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas	223	189
Notice of appeal of appellant Interstate Circuit, Inc. to the Supreme Court of the United States	223	189
Notice of appeal of appellant United Artists Corporation to the Supreme Court of the United States	228	192
Order noting probable jurisdiction	232	195

[fol. 3]

IN THE 44th JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC., Defendant.

PLAINTIFF'S ORIGINAL PETITION—Filed February 14, 1966

To the Honorable Judge of Said Court:

Comes Now the City of Dallas, a municipal corporation, incorporated under the laws of the State of Texas, complaining of Interstate Circuit, Inc., a Delaware corporation, Defendant, and for cause of action would respectfully show the Court:

I.

The City of Dallas, a municipal corporation, organized under and by virtue of the laws of the State of Texas, is located in Dallas County, Texas, and the Defendant, Interstate Circuit, Inc. is a Delaware corporation with a permit to do business in the State of Texas, with Raymond Willie, Vice-President and General Manager, Majestic Building, Dallas, Texas, being the agent of said corporation upon whom service of process may be had.

II.

On November 22, 1965, the City Council of the City of Dallas enacted Ordinance No. 11284, known as the City of Dallas Motion Picture Classification Ordinance; Providing for the establishment of a Motion Picture Classification Board, outlining classification procedures, defining offenses related to the exhibition of films "not suitable for young

persons"; Providing for the issuance, revocation and suspension of licenses; Providing for judicial review and providing for injunctive relief and defining the term "not suitable for young persons", a copy of said ordinance being attached hereto and being made a part hereof as Exhibit "A" as though fully written herein word for word.

III.

Plaintiff would further show the Court in this connection that pursuant to said ordinance, the City Council of the City of Dallas appointed a chairman and eight (8) members of the Motion Picture Classification Board, and pur- [fol. 4] suant to Ordinance No. 11284, and that Ordinance No. 11298 was enacted by the City Council of the City of Dallas on December 6, 1965, which amended Ordinance No. 11284, and pursuant thereto the City Council appointed three (3) alternate members of said Board. A copy of said Ordinance being attached hereto as Exhibit "B" as though fully written herein word for word.

Plaintiff would further show the Court that the above film was classified based upon the standard contained in Subsection (f) of Section 46A-1 of said Ordinance, which read as follows:

"(f) 'Not suitable for young persons' means:

"(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest."

IV.

Plaintiff would further show the Court that pursuant to Ordinance No. 11284 which requires such action on behalf of such Motion Picture exhibitor, the Defendant, Interstate Circuit, Inc. submitted the film "Viva Maria" to the

Motion Picture Classification Board by letter dated January 24, 1966, and the Defendant notified said Classification Board that it proposed to classify the film "Viva Maria" to be exhibited at the Esquire Theatre, Dallas, Texas, as "suitable for young persons", and that the Classification Board met on January 25, 1966, and requested a screening of said movie as provided in Ordinance No. 11284, and that said picture was made available to the Motion Picture Classification Board on Monday, February 7, 1966, and that after viewing said film, the Board classified it as being "not suitable for young persons" based upon the standard contained in Subparagraph 2 of Paragraph 4 of Section 46A-1 of Ordinance No. 11284 by portraying sexual promiscuity in such a manner as to be in the judgment of the Board likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interests.

That the Board filed such classification with the City Secretary of the City of Dallas as provided in said Ordinance, and the City Secretary, as Secretary of the Motion Picture Classification Board, notified the Defendant Interstate Circuit, Inc. by letter dated February 9, 1966, and that by letter dated February 11, 1966, Defendant notified the Classification Board of the non-acceptance of such classification, and that it intended to exhibit the film "Viva Maria" at the Esquire Theatre under the classification of "suitable for young persons".

[fol. 5] V.

The Plaintiff would further show the Court that on Sunday, February 13, 1966, the Defendant inserted an advertisement in the Dallas Morning News, Dallas, Texas, stating that the film involved herein would be shown at the above named theatre without carrying the notation as required by Ordinance No. 11284, "not suitable for young persons", and that on said date, to-wit: February 17, 1966, the film involved is scheduled to be exhibited at the Esquire

Theatre, Dallas, Texas, without carrying the notation "Not suitable for young persons", as provided by Ordinance No. 11284 as was classified by the Dallas Motion Picture Classification Board.

VI.

Plaintiff would further show the Court that the film "Viva Maria" will be exhibited by Defendant Interstate Circuit, Inc. at the Esquire Theatre in Dallas, Texas, in violation of Ordinance No. 11284 of the City of Dallas as amended unless Defendant is enjoined, and said Defendant will exhibit said film to the general public, including young persons under the age of sixteen (16) years, in violation of Ordinance No. 11284, without advertising said film as being "not suitable for young persons", and that this matter should be set for hearing before the Court on Plaintiff's application for a temporary and permanent injunction, as provided in Ordinance No. 11284.

Wherefore, Premises Considered, Plaintiff prays that Defendant be cited to appear and answer herein, and that this cause be set for a hearing within five (5) days on its application for a temporary injunction, and that if Defendant will agree, that this cause be heard on its application for a permanent injunction, and that upon a final hearing, said Defendant be enjoined from violating Ordinance No. 11284 as set out above; and that all costs be adjudged against Defendant herein, and for such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

N. Alex Bickley, Ted P. MacMaster, Pat Stacy, Jerry Williamson, Attorneys for Plaintiff, City of Dallas, 501 City Hall, Dallas, Texas.

[fol. 6] *Duly sworn to by Pat Stacy, jurat omitted in printing.*

[fol. 7]

FIAT

66-1280-B

On this the 14 day of February, 1966, came on for consideration the sworn Petition of Plaintiff, City of Dallas, wherein the City of Dallas is seeking a temporary and permanent injunction against Interstate Circuit, Inc., and Plaintiff requests that the cause be set for hearing,

It Is Therefore Ordered, Adjudged and Decreed by the Court that the Plaintiff's application for a temporary and permanent injunction be set for a hearing on the 17 day of February, 1966, at 9 o'clock a.m., and it appearing to the Court that the firm of Tobolowsky, Hartt, Schlinger & Blalock, Attorneys for Defendant, have agreed to waive service of process and to accept service of process; there shall be no service of process issued by the District Clerk.

Julian C. Hyer, Judge Presiding.

Note: Original Exhibits "A" and "B" are being sent to the Court of Civil Appeals in their original form.

[File endorsement omitted]

[fol. 8]

IN THE 44TH JUDICIAL DISTRICT COURT
IN AND FOR DALLAS COUNTY, TEXAS
No. 66-1280-B

CITY OF DALLAS,

vs.

INTERSTATE CIRCUIT, INC.

ANSWER IN INTERVENTION OF UNITED ARTISTS CORPORATION—Filed February 16, 1966

To the Honorable Julian C. Hyer, Judge of Said Court:

Now comes United Artists Corporation and files this its Answer in Intervention to the Plaintiff's Original Petition in the above styled and numbered cause of action and respectfully shows to the Court, the following:

I.

United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware with a Certificate of Authority to transact business within the State of Texas. During the period from November 22, 1965, to date, and prior thereto, United Artists Corporation has been a distributor of motion picture films and has been engaged in the business of licensing the right to exhibit motion picture films distributed by it. United Artists Corporation, as Intervenor, has an interest in the matter in controversy herein in that it is the distributor, and exclusive owner of the domestic distribution rights, of the motion picture film "Viva Maria" and has licensed said film

[File endorsement omitted]

for exhibition at the Esquire Theater in Dallas, Texas, to Interstate Circuit, Inc. such exhibition to commence on February 17, 1966. Plaintiff City of Dallas seeks an injunction herein, which if granted would interfere with the heretofore existing contractual rights and obligations of Intervenor and Defendant Interstate Circuit, Inc. and would deny Intervenor its constitutionally guaranteed rights of free speech and expression, equal protection of the law and due process of law.

[fol. 9]

II.

Attached hereto as Exhibit A and made a part hereof for all purposes as fully as though set forth in the body hereof is a true and correct copy of the License Agreement heretofore executed by Interstate Circuit, Inc. and Intervenor with respect to the aforementioned exhibition of "Viva Maria".

III.

Ordinance No. 11284, the City of Dallas Motion Picture Classification Ordinance, was adopted by the City Council of the City of Dallas on November 22, 1965; it controvenes the rights of Intervenor, as the distributor of said motion picture film "Viva Maria", guaranteed to it by the United States Constitution and by the Texas Constitution in each and every of the following particulars:

A. The said Ordinance violates the First Amendment to the United States Constitution, which is applicable to the City of Dallas under the due process of law clause of the Fourteenth Amendment of said Constitution, in that the said Ordinance unlawfully inhibits and restrains protected areas of freedom of speech.

B. The said Ordinance violates the due process of law clause of the Fourteenth Amendment to the United States Constitution in that it fails to provide adequate

standards to govern the actions of the Motion Picture Classification Board; and in that the standards contained in said Ordinance are so vague that Intervenor cannot be and is not adequately apprised of the films which may be subject to classification thereunder.

C. The said Ordinance violates the due process of law clause of the Fourteenth Amendment to the United States Constitution and the First Amendment to said Constitution in that it places a total restraint on the exhibition of "films", as defined in the Ordinance, in events not constitutionally permitted, including for example any of specified minor infractions of the Ordinance.

D. The said Ordinance violates the First Amendment and the Fourteenth Amendment to the United [fol. 10] States Constitution in that it does not place the burden on the City of Dallas to prove that a film classified as "not suitable for young persons" is an unprotected expression of free speech under said constitutional provisions.

E. The said Ordinance violates the First Amendment and the Fourteenth Amendment to the United States Constitution in that the action of the Motion Picture Classification Board constitutes a restraint on free speech prior to any judicial determination that the matter contained in such film is an unprotected expression of free speech.

F. The said Ordinance violates the First Amendment and the Fourteenth Amendment to the United States Constitution in that it does not assure a prompt and final judicial decision as to whether or not the matter contained in a film classified as "not suitable for young persons" is within or without protected areas of free speech.

G. The said Ordinance violates the equal protection clause of the Fourteenth Amendment of the United

States Constitution in that it unlawfully and unreasonably discriminates against this Intervenor and its rights in the film "Viva Maria", because the Ordinance excludes from its coverage all and each of the following: (i) all plays, operettas, operas, musical and dramatic productions and other forms of live stage entertainment; (ii) films shown on local television stations; (iii) all news reels; (iv) all persons who show "films," as defined in that Ordinance, without charging for admission to the exhibition of the same; and (v) the exhibition of comparable films to the same or similar audiences.

H. The said Ordinance violates the freedom of speech provisions in Article I, Section 8 of the Texas Constitution, in that it unlawfully places a prior re- [fol. 11] straint on the exhibition of all movies in the City of Dallas.

I. The said Ordinance violates the freedom of speech provisions in Article I, Section 8, of the Texas Constitution in that the said Ordinance unlawfully inhibits and restrains protected areas of freedom of speech.

J. The said Ordinance violates the "due course of law" provisions in Article I, Section 19, of the Texas Constitution in that it fails to provide adequate standards to govern the actions of the Motion Picture Classification Board; and in that the standards contained in said Ordinance are so vague that Intervenor cannot be and is not adequately apprised of the films which may be subject to classification thereunder.

K. The Ordinance violates the "due course of law" provisions in Article I, Section 19, of the Texas Constitution in that it places a total restraint on the exhibition of "films", as defined in the Ordinance, in events not constitutionally permitted, including for example any of specified minor infractions of the Ordinance.

L. The said Ordinance violates Article I, Section 19, of the Texas Constitution in that it does not place the burden on the City of Dallas to prove that a film classified as "not suitable for young persons" is an unprotected expression of free speech under said constitutional provisions.

M. The said Ordinance violates Article I, Section 19, of the Texas Constitution in that the action of the Motion Picture Classification Board constitutes a restraint on free speech prior to any judicial determination that the matter contained in such film is an unprotected expression of free speech..

[fol. 12] N. The said Ordinance violates Article I, Section 19, of the Texas Constitution in that it does not assure a prompt and final judicial decision as to whether or not the matter contained in a film classified as "not suitable for young persons" is within or without protected areas of free speech.

O. The said Ordinance violates the equal rights provision contained in Article I, Section 3, of the Texas Constitution, in that it unlawfully and unreasonably discriminates against this Intervenor and its rights in the film "Viva Maria", because the Ordinance excludes from its coverage all and each of the following: (i) all plays, operettas, operas, musical and dramatic productions and other forms of live stage entertainment; (ii) films shown on local television stations; (iii) all news reels; (iv) all persons who show "films," as defined in that Ordinance, without charging for admission to the exhibition of the same; and (v) the exhibition of comparable films to the same or similar audiences.

P. The said Ordinance violates the freedom of speech provisions in Article I, Section 8, of the Texas Constitution in that the test provided in that Ordinance

for declaring a film "not suitable for young persons" is not that which is required under the Texas or the United States Constitutions by the United States Supreme Court, which rules that for a film to be excluded from protected areas of free speech, the test must be "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interests."

[fol. 13] Q. Under the requisites of due process of law, and of equal protection of law, and of assured protection of free speech, in accordance with all and each of the provisions of (i) the First Amendment to the Constitution of the United States (ii) the Fourteenth Amendment thereto (iii) Article I, Section 8 of the Texas Constitution and (iv) Article I, Sections 3 and 19 of the Texas Constitution, the injunction sought by the City of Dallas must be denied because the ordinance under which it seeks the injunction prescribes unconstitutional standards to serve as bases for classifications to be made and provides for processes that are unfair and unconstitutional, all as to be followed by the Motion Picture Classification Board, in each of the following respects:

1. Subsection (f) of Section 46A-1 of said Ordinance details no less than 46 respects, any one of which may be determined by the Board in its discretion as a single basis for a classification proscribing exhibition of a film as films generally are exhibited; and the Ordinance provides for a classification of every film, the exhibition of which is determined to be thus proscribed, under a single all embracing generality—"not suitable for young persons".

2. Each of the 46 bases of proscription are vague, indefinite and uncertain, in that as to each the standard of the Ordinance is expressly that "in the judg-

ment of the Board, there is a substantial probability that it will create the impression on young persons. . . .", the vague, indefinite and uncertain qualities being specifically involved as to each of the 46, in that (i) "an impression" will be "created" on "young [fol. 14] persons" only; that (ii) the Board is not directed to find any such impression, but only that there is a "substantial probability" thereof; and that (iii) the Board is not directed even to find such a substantial probability as a fact but merely that in the opinion or judgment of the Board that there may be such a substantial probability of such an impression.

3. Moreover, in groups of six terms, standards are presented to the Board as bases for proscribing a film, these six standards each being in the alternative to the other five, namely that the conduct about which the "impression on young people" may be a "substantial probability" in the "judgment of the Board", may be (i) "profitable", or (ii) "desirable", or (iii) "acceptable", or (iv) "respectable", or (v) "praiseworthy", or (vi) "commonly accepted"; with the standards of the Ordinance specifying that any one of the six suffices; and with the meaning of each of the six being in such a context vague, indefinite and uncertain.

4. For one example, pursuing the words of the Ordinance quoted in Plaintiff's Petition, Section 46A-1 (f)(2) covers no less than 24 alternative determinations of the Board one or another of which may have been made with reference to the film "Viva Maria" and one of those 24 may be that it "portrayed nudity beyond the customary limits of candor in the community . . . in such a manner as . . . in the judgment of the Board, there is a substantial probability that it will create the impression on young persons

[fol. 15] that such conduct is . . . acceptable." That determination is too vague, uncertain and indefinite to serve as a basis for proscription of any film or as a basis for any criminal or forfeiture proceeding.

5. If that be the charge against "Viva Maria", then the injunction herein sought cannot be granted.

6. If that not be the charge against "Viva Maria" in this action but some other of the 24 alternatives within the language of Section 46A-1 (f)(2), then the uncertainty of which of the 24 items is charged, makes it improper under the Ordinance that any injunction be issued herein.

7. The Ordinance in specifying its standards omits each and any of the following standards or the equivalent of any of them and in effect directs the judgment of the Board for which it provides to be without taking consideration of any of the following:

(i) The artistic beauty of the film as a whole;

(ii) The quality of humor or any farcical aspects of the film;

(iii) The literary quality of the film;

(iv) The social message of the film;

(v) Any other redeeming feature of the film.

And unconstitutionally provides for censorship of a film without essential emphasis on these bases or any of them for preserving the vested right of expression that a national distributor of a film has.

[fol. 16] 8. The Ordinance as construed by Plaintiff in its Petition places the standard wholly on the judgment of the Board and not on the judgment of the Court.

9. The Ordinance as construed by Plaintiff in its Petition places on Plaintiff the burden only of show-

ing what the action of the Board has been and not that the film "Viva Maria" is in fact beyond the constitutional limits of protection to free speech.

10. The Ordinance in its application to Intervenor, the interested motion picture distributor, provides that an automatic proscription of the film "Viva Maria" follows, once the Board has classified that film as "not suitable for young persons", unless Interstate Circuit, Inc., a motion picture exhibitor, takes the affirmative action specified in the Ordinance to prevent that automatic result; no notice to any distributor is provided for and this Intervenor had no such notice and had no recourse under the Ordinance to prevent the proscription (if the exhibitor failed to take the specified affirmative action) except to assume the burden of seeking an injunction to prevent the City from enforcing the proscription decided upon by its Board; the constitutional protection of free speech to which this Intervenor has a right may not constitutionally be thus divested by action of a board, an administrative body or a municipality.

11. The Ordinance in its application to Intervenor and its rights in "Viva Maria", is lacking in due process and is unfair in that it contemplates a temporary injunction pending a hearing whether a permanent injunction shall issue, and without any de- [fol. 17] termination by a court or by a jury on the merits as to whether the film is or is not within the protection accorded under the Constitution to free speech.

12. The Ordinance as construed by the Plaintiff is lacking in due process and is unfair in its application to Intervenor and its rights in "Viva Maria" in that a consolidated hearing on a temporary and a permanent injunction is contemplated, if the Plaintiff and exhibitor shall so agree and if they agree, with

or without a jury, without Intervenor being granted any notice or any opportunity to be heard at any stage of the proceedings before the Board or before the Court.

IV.

For further answer, if the same be necessary, to Plaintiff's Original Petition, Intervenor relies upon and asserts its legal right of requiring the Plaintiff to prove by a preponderance of the evidence all material allegations asserted by it. Intervenor would further show that no adequate petition has been filed with the City, complying either with the requisites of said Ordinance or with the Rules of Civil Procedure of the State of Texas, authorizing the entry of any injunction with respect to the exhibition of "Viva Maria", either temporary or permanent.

Wherefore, premises considered, Intervenor United Artists Corporation prays that Plaintiff's application for a temporary injunction and its application for a permanent [fol. 18] injunction be in each and every respect denied and that Plaintiff's Original Petition be dismissed.

Paul Carrington, Dan McElroy, Robert H. Mow, Jr., Attorneys for Intervenor United Artists Corporation, 1700 Mercantile Bank Building, Dallas, Texas.

Of Counsel: Carrington, Johnson & Stephens, 1700 Mercantile Bank Building, Dallas, Texas.

Certificate of Service Pursuant to Rule 72 (omitted in printing).

Note: Exhibit "A" attached to this Instrument is being sent to the Court of Civil Appeals in its original form.

[fol. 19]

IN THE 44TH JUDICIAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS
No. 66-1280-B

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC., Defendant.

DEFENDANT'S ORIGINAL ANSWER—
Filed February 17, 1966

To the Honorable Judge of Said Court:

Now comes Interstate Circuit, Inc., Defendant herein, and files this its original answer to the Plaintiff's Petition, and for such answer would respectfully show unto the Court the following:

I.

This Defendant authorized its attorneys to receive pleadings in this cause without having a citation or a notice to show cause issued. Pursuant to this agreement a copy of Plaintiff's Original Petition was delivered to said attorneys on Monday, February 14, 1966. At this time Defendant is filing its answer for the purpose of having written pleadings before the Court at the time of the temporary injunction hearing set in this cause for 9:00 o'clock A.M. on Thursday, February 17, 1966. The Defendant reserves to itself the right to amend its pleadings and to file such amended answer of the appearance day which would nor-

[File endorsement omitted]

mally be accorded to it on Monday after twenty (20) days following the service of the papers on February 14, 1966.

II.

The Defendant excepts to Plaintiff's Petition in its entirety for the following reasons:

(1) Nowhere in the petition does the Plaintiff allege that it does not have an adequate remedy at law.

[fol. 20] (2) The Petition does not allege that the advertising in the Dallas Morning News on Sunday, February 13, 1966, was in fact illegal. In this connection, the Defendant applied for a classification of the commercial motion picture "Viva Maria", as suitable for young persons, according to the terms of its letter of January 24, 1966, addressed to the Dallas Motion Picture Classification Board. According to the pleadings of the Plaintiff, this Board by instrument and by letter dated February 9, 1966, notified the Defendant that the requested classification was not approved and that the Board had classified the picture as "not suitable for young persons". Ordinance No. 11284, Section 46A-3(c), provides in part:

> "If the classification of a film is changed as the result of such a hearing to the classification 'not suitable for young persons', the exhibitor showing the film shall have seven days in which to alter the advertising and audience policy to comply with such classification."

(3) The Petition does not allege that in truth and in fact, the motion picture "Viva Maria", portrays sexual promiscuity in such a manner as to incite or encourage delinquency or sexual promiscuity on the part of young persons, or to appeal to their prurient interests. This exception goes to the Petition as a whole, and particularly to the last unnumbered paragraph of Paragraph III, and to the first paragraph of Paragraph IV of Plaintiff's Petition.

(4) The petition does not allege or in any wise show that an injunction is necessary to prevent the City from suffering an irreparable loss or a substantial injury.

(5) There is no allegation that the Plaintiff has complied with the terms of its own Ordinance No. 11284, and has brought a suit within three (3) days following the delivery to the City Secretary of the Defendant-Exhibitor's [fol. 21] notice of non-acceptance of the ruling of the Classification Board regarding the picture "Viva Maria". This suit is presently cast as an injunction to prevent the Defendant from advertising that it will show this picture as "suitable for young persons". The First and Fourteenth Amendments of the Constitution of the United States as interpreted in *Freedman* v. *Maryland,* and the terms of Ordinance No. 11284, Section 7 (Judicial Review), requires that following the classification restricting the exhibition of a motion picture, as was done by the Dallas Movie Review Classification Board in this case, that the Board, so classifying or restricting, should immediately go into Court and have its determination confirmed by a Court of competent jurisdiction. Failure to allege and prove that this has been done violates both the terms of the City's ordinance and also the Constitution.

(6) There is no showing that the criminal sanctions of Ordinance No. 11284 are not an adequate remedy at law.

(7) Defendant objects and excepts to the Petition as a whole because it does not plead the decision of the Dallas Movie Review Classification Board, but instead rather pleads an interpretation thereof as is sworn to by one of the City Attorneys.

III.

Defendant excepts to the allegations of Paragraph VI, wherein it is alleged "that the matter should be set for hearing—as provided in Ordinance No. 11284", for the rea-

son that the City of Dallas does not have any authority to provide for a District Court of the State of Texas setting a hearing on temporary and permanent injunction; and

For the further reason that the Ordinance is long, consisting of approximately ten (10) pages of printed matter, and the Petition does not particularize what portion of the Ordinance, if any, under which the Plaintiff seeks to bring this action.

[fol. 22] IV.

Defendant excepts and objects to the prayer in its entirety for the reason that it does not set forth the type or kind of relief which the Plaintiff seeks to obtain herein.

A prayer seeking to enjoin the Defendant from violating an Ordinance providing criminal penalties in its own right does not, within the purview of a court of equity which would entitle the Plaintiff to the remedy of injunction.

[fol. 23] V.

The Defendant denies each and every, all and singular, the material allegations of Plaintiff's Original Petition, and demands strict proof thereof.

VI.

Answering herein affirmatively, the Defendant would show that Ordinance No. 11284 is unconstitutional and violates the rights of this Defendant under the First and Fourteenth Amendments of the Constitution of the United States, and also under the provisions of Article I, Section 8, of the Constitution of the State of Texas, for the following reasons:

(1) The Ordinance as a whole establishes a form of prior restraint and censorship of communication. The procedures established by it require that the Board classify pictures as "not suitable for young persons" and sets forth a definition of this term in Section 46A-1(f) of Ordinance No.

11284. (In order to avoid encumbering the record with duplication of pleadings, all references to the Ordinance, unless otherwise stated, will be to Ordinance No. 11284, a copy of which is found in the Plaintiff's Petition, and a copy will be introduced by this Defendant at the time of trial if the same is not done by the Plaintiff as a part of its case.)

(2) The provisions of the Ordinance purporting to define "not suitable for young persons" are vague and indefinite. This definition found in Section 46A-1(f) does not provide any objective standard for the use by members of the Board, but to the contrary, directs the Board to classify a picture as "not suitable for young persons" if, in the judgment of the Board, the picture is likely to incite crime, delinquency, or sexual promiscuity by young persons or to appeal to their prurient interests. Without legally recognized standards which can be determined and applied objectively, the classification of films under the Ordinance will violate Plaintiff's rights under the First Amendment.

[fol. 24] (3) Prompt judicial determination of any action by the Plaintiff in classifying a motion picture as "not suitable for young persons", must be assured to the Defendant. This provision for prompt judicial determination must be guaranteed by statute or by a final court decision. Neither statutes of the State of Texas, the Texas Rules of Civil Procedure, and the Rules of Practice in Civil Cases in the District Courts of Dallas County provide for prompt judicial determination. The proceedings for a temporary injunction are given certain preferences by statutes, and by Texas Rules of Civil Procedure, but do not give a determination of the Plaintiff's rights since the purpose of the temporary injunction is to preserve the status quo, and such a writ will issue for that purpose on the showing of a "probable right" and a "probable injury" without sufficient proof to establish a preponderance of the evidence. The trial for a permanent injunction is given no

preferential treatment by either rules or statutes. Neither a temporary injunction nor a permanent injunction proceeding provides a prompt judicial determination of the Plaintiff's right to restrict the exhibition of commercial motion pictures licensed for showing in the Defendant's theatres.

Section 7, entitled "Judicial Review", is a concession by the Plaintiff to waive many rights which it would have for the preparation of a case according to standards established by the Texas statutes and Rules of Civil Procedure. The agreement of Plaintiff to waive its rights as found in this section does not provide assurance of prompt judicial review by statute or by court decision. The Plaintiff does not have the power or authority to change either the Texas statutes or the Texas Rules of Civil Procedure, and the attempt by it to establish a system of censorship or classification without providing for prompt review violates the Defendant's rights under the First Amendment. Besides the absence of a statute or court decision assuring prompt judicial review of the Plaintiff's action in classifying a pic- [fol. 25] ture, the Ordinance is defective because the Plaintiff does not have the right to tell any one of the trial or appellate courts which may hear a case of this nature how to set its docket and to control the actual trial procedures. The Plaintiff's professed cooperation and willingness to assure a speedy trial insofar as its rights are concerned does not provide the essential guarantee that there will be a speedy trial.

(4) In defining "advertisement" as commercial promotional material initiated by an exhibitor, the Ordinance restricts advertising material. It is not clear, and there is no standard provided to determine whether "initiated" means the display of posters, newspaper advertisements, etc., furnished by the producer or whether it means to restrict those designed and published or exhibited by the exhibitors. A substantial part of the advertising and promotional material designed for any motion picture is pre-

pared as a part of the national advertising campaign. Whether it be for billboard and poster display or in the form of "trailers" showing a preview of coming attractions, this is material licensed to the exhibitor as a part of the rights it obtains in connection with exhibiting the motion picture. Further, the trailer of any picture may become classified as "not suitable for young persons" if it has been shown as a part of the program where a film of that type was exhibited. This interferes with the free movement of both the advertising material, and the motion pictures themselves in interstate commerce, and interferes with the right of the Defendant to present a non-obscene advertisement to the public in the advertising campaign for a picture which is to be shown.

(5) By the operation of its Ordinance, the Defendant discriminates against Defendant in favor of the television stations. Nearly all of the motion pictures which are exhibited by Defendant in its theatres are shown on television. To restrict Defendant by a burdensome classification and cen- [fol. 26] sorship ordinance while allowing all television stations to exhibit the same picture in the same area is an unequal enforcement of the law.

(6) The Plaintiff, by the Ordinance, would divert Defendant's patrons to adjacent cities, where the same motion pictures could be seen without restraint as pointed out heretofore.

(7) Obscenity is the only valid ground for restricting or prohibiting the classification of a commercial motion picture under the amendments to the United States Constitution. Ordinance No. 11284 is an attempt to classify commercial motion pictures based upon their possible effect upon young persons as a special group or class. This is contrary to the constitutional provisions mentioned above and the laws of Texas. This pronouncement regarding the constitutional provisions was made prior to the amendment of Article 527 which exempted commercial motion pictures from ob-

scenity prosecutions as mentioned in the following paragraph. The constitutional provisions alone have been construed to prohibit a classification system such as the Plaintiff seeks to enforce by Ordinance No. 11284.

VII.

The provisions of Ordinance No. 11284 violate the Texas Constitution and the state law in the following particulars:

(1) Article 527 of the Penal Code prohibits distribution of obscene material to minors. The exact language is as follows:

> "Sec. 2. Whoever shall knowingly offer for sale, sell, give away, exhibit, televise, or otherwise distribute, make, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, pictures, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording, or presentation, or other article which is obscene, *to a minor*, shall be fined not more than Two Thousand Five Hundred Dollars ($2,500) nor imprisoned in the county jail more than two (2) years or both". (Emphasis added.)

[fol. 27] This statute preempts the field of distribution of obscene material to minors. The Plaintiff, as a home rule city, cannot legislate in violation and contradiction of the state statute which controls this subject. Only obscene material is denied the protection of the First Amendment of the Constitution of the United States according to repeated decisions of the Supreme Court of the United States; Article I, Section 8, of the Texas Constitution, gives a similar protection and has been so construed by Texas courts; Article 527 of the Penal Code was amended in 1961 to incorporate the Supreme Court's definition of obscenity and to provide the regulation set forth in that statute.

[fol. 28] (2) Article 527 of the Penal Code of the State of Texas sets standards for the regulation of obscene material. Commercial motion picture films that have the seal of the Production Code of the Motion Picture Association of America, Inc., or which legally move in interstate commerce, or which are lawfully imported into the United States through a customs office are exempt from regulation, along with newspapers. It is the intention of this statute to protect commercial motion pictures and this industry from the harassment of ordinances such as the one involved in this case. Even as a home rule city, the Plaintiff cannot regulate motion pictures in violation or in terms different from those of Article 527 of the Penal Code.

XI.

Ordinance No. 11284 purports to classify motion pictures, and by both the preamble and the emergency clause, ties directly to a prior classification ordinance which has been held to be unconstitutional in certain particulars, and the enforcement of which was enjoined. Ordinance No. 10,963 was passed on April 5, 1965, and declared that there was a serious increase of crime, delinquency, and sexual promiscuity on the part of young persons of school age in the City of Dallas. With this preamble, the Plaintiff, in that Ordinance, restricted the exhibition of motion pictures, in exactly the same language as is found in the present ordinance to young persons under eighteen (18) years of age. There was no statistical evidence of any nature, either in the records of the Plaintiff's Police Department, nor in the records of the Juvenile Department of Dallas County, to show any "serious increase of crime, delinquency, and sexual promiscuity on the part of young persons of school age" (meaning eighteen years old in the former ordinance) in the City of Dallas when the first ordinance was passed on April 5, 1965. There are no records in the City of Dallas [fol. 29] to show that there has been any material change in crime, delinquency, and sexual promiscuity by sixteen (16) or seventeen (17) year old boys or girls in the City of Dallas

after April 5, 1965, and prior to the passage of this Ordinance on November 22, 1965. The Plaintiff is seeking to establish the system of prior restraint and censorship already discussed here for the sole purpose of mollifying the demands of certain organized groups in the City. These groups by political pressures are seeking to restrict the exhibition of commercial motion pictures which they do not like, but which are not obscene and which can legally be shown by Defendant under its rights guaranteed by the First Amendment. There is no causal connection shown between the viewing of commercial motion pictures as have been exhibited in the City of Dallas and any increase of crime, delinquency, or sexual promiscuity on the part of young persons, or anyone else. There is no clear and present danger of any nature shown that would justify the Plaintiff's interference with the Defendant's rights to free communication.

Cross-Action

XII.

The Defendant, Interstate Circuit, Inc., coming now as a Cross-Plaintiff, would show that the parties are correctly identified in that Cross-Defendant is a municipal corporation with a home rule charter, and that it, Cross-Plaintiff, is a Delaware corporation doing business in Texas, operating commercial motion picture theatres in that City and elsewhere.

Cross-Plaintiff further adopts the allegations contained in Paragraphs No. VI through XI inclusive as a part of its cross-action.

XIII.

The Cross-Defendant under the terms of its own ordinance, has not gone into a District Court of Dallas County, Texas, to secure an affirmative adjudication by injunction [fol. 30] or a declaratory judgment sustaining the action

of its Motion Picture Classification Board in classifying the motion picture "Viva Maria" as "not suitable for young persons". By Section 46A-7 of the Ordinance as properly interpreted by the Cross-Defendant, the City of Dallas had the burden of securing the judgment of the court that any motion picture classified as "not suitable for young persons", and particularly "Viva Maria", was not suitable for young persons. On February 10, 1966, Cross-Plaintiff received notification from the City Secretary that its application to show this picture was rejected by the Motion Picture Classification Board, and that the picture was, by that Board, classified as "not suitable for young persons". *On* February 11, 1966, Cross-Plaintiff delivered its notice of non-acceptance of this classification. Three days following the delivery of such notice expired on February 14, 1966. To this date, February 17, 1966, the Cross-Defendant has not undertaken the burden which it placed upon itself in compliance with *Freedman* v. *Maryland*. It has not asked this Court or any court to determine that "Viva Maria" is a motion picture not suitable for exhibition to young people. Thus, it has not gone into a court seeking a prompt judicial determination that its restriction on the exhibition of this film is valid.

XIV.

The failure to get a prompt judicial determination of the validity of its classification ordinance as applied to this picture makes the ordinance unconstitutional to the specific fact application here as well as in the general situations outlined above.

Wherefore, Premises Considered, Defendant prays that:

(1) Each of its special exceptions be sustained;

(2) That the injunction, both temporary and permanent, be denied the Plaintiff, and that the Plaintiff take nothing by its suit;

[fol. 31] (3) That Ordinance No. 11284 of the City of Dallas be declared unconstitutional in general, and in its particular application herein;

(4) Defendant, as Cross-Plaintiff, prays that Ordinance No. 11284 be declared unconstitutional and that the City of Dallas be permanently enjoined from enforcing the same and attempting to classify and censor commercial motion pictures exhibited by this Cross-Plaintiff; and

(5) Both as Defendant and Cross-Plaintiff, that it recover its costs herein expended, and for such other and further relief, both in law and in equity, that it is justly entitled to receive.

Respectfully submitted,

Tobolowsky, Hartt, Schlinger & Blalock, By Grover Hartt, Jr., By Edwin Tobolowsky, 3525 Southland Center, Dallas, Texas 75201, RI 2-9205, Attorneys for Defendant and Cross-Plaintiff.

Proof of Service (omitted in printing).

[fol. 32]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

No. 66-1280-B

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC., Defendant.

TRIAL AMENDMENT—Filed February 17, 1966

To the Honorable Judge of Said Court:

Comes now the City of Dallas, Plaintiff herein, and with leave of the Court first had and obtained, files this its Trial Amendment in the above entitled and numbered cause, amending Paragraph VI and the Prayer of Plaintiff's Original Petition filed herein, and as reason therefor, would show the Court as follows:

1.

That the film "Viva Maria" scheduled by the Defendant to be exhibited at the Esquire Theatre in Dallas, Texas, beginning February 17, 1966, was classified by the City of Dallas Motion Picture Classification Board as "not suitable for young persons" on the ground that the film as a whole portrays sexual promiscuity in such a manner as to be, in the judgment of said Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interests. That the scheduled exhibition of said film by Defendant at the Esquire Theatre as aforesaid, is in violation of Ordi-

[File endorsement omitted]

nance No. 11284 of the City of Dallas, as amended, in that the Defendant has failed and refused and continues to fail and refuse to advertise said film as "not suitable for young persons" although it was so classified by said Board, and unless the Defendant is restrained and enjoined from exhibiting said film without advertising it as required by said Ordinance in question, to-wit: Ordinance No. 11284, as amended, irreparable damage and injury will result to the health, safety and welfare of the City of Dallas, and particularly the young people under the age of sixteen years, [fol. 33] and the Plaintiff has no adequate remedy at law other than by injunction to prohibit the exhibition of said film in violation of said Ordinance, since the purported intention of the Defendant to exhibit said film constitutes a public nuisance in violation of Section 46A-8, Subsection (a) of said Ordinance, which declares that the act of exhibiting a film classified "not suitable for young persons", if in the current advertisement of such film, such exhibitor fails to state clearly the classification of such film, constitutes a public nuisance.

In this connection Plaintiff would further show the Court that it has complied with the requirements of said Ordinance in filing its application for a temporary injunction, in that on Friday, February 11, 1966, as heretofore stated, the Defendant notified the Classification Board that it did not intend to comply with the classification placed on said film by said Classification Board, and suit was instituted within three days after the receipt of said letter, to-wit, on February 14, 1966.

Wherefore, Premises considered, your Plaintiff prays that upon a hearing hereof, the Defendant having answered herein, that this Court issue its Writ for Temporary Injunction, enjoining the Defendant from:

(1) Exhibiting the film "Viva Maria" without advertising said film as "not suitable for young persons", the Defendant having evidenced his intention in writing not to comply with the provisions and requirements

of said Ordinance No. 11284 as amended, and the ruling of the Board; and

(2) Violating Ordinance No. 11284, as amended, by exhibiting any film contrary to the provisions of said Ordinance.

That upon a final hearing hereof that this cause be heard on Plaintiff's Application for a permanent injunction and that said Defendant be permanently enjoined from violating the provisions of Ordinance No. 11284 as amended, as set out [fol. 34] above, and that all costs be adjudged against Defendant herein, and Plaintiff prays for such other and further relief to which it may be entitled.

Respectfully submitted,

N. Alex Bickley, Ted P. MacMaster, Pat Stacy, Jerry Williamson, Attorneys for Plaintiff, City of Dallas, 501 City Hall, Dallas, Texas 75201.

Duly sworn to by Ted P. MacMaster, jurat omitted in printing.

Proof of Service (omitted in printing).

[fol. 35]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

No. 66-1280-B

CITY OF DALLAS,

vs.

INTERSTATE CIRCUIT, INC.

MOTION TO STRIKE ANSWER IN INTERVENTION—
Filed February 17, 1966

To the Honorable Julien C. Hyer, Judge of Said Court:

Now Comes the City of Dallas, Plaintiff in the above styled and numbered cause and files this its Motion to Strike its Answer in Intervention, filed by the United Artists Corporation to the Plaintiff's Original Petition in the above styled and numbered cause of action, and as grounds for such Motion would show the Court the following:

I.

The allegations by the Intervenor that Ordinance No. 11284, the City of Dallas Motion Picture Classification Ordinance, violates the First and Fourteenth Amendments to the Constitution of the United States and Article 1, Section 8 of the Texas Constitution, as well as other Sections of the Texas Constitution, was adversely determined to the contentions of the Interstate Circuit, Inc. in the case of Interstate Circuit, Inc., et al, Plaintiffs vs. City of Dallas, Defendant, Civil Action No. 3-1303, at a hearing before the

[File endorsement omitted]

Honorable Sarah T. Hughes, Judge of the United States District Court for the Northern District of Texas; said Judgment being entered on December 20, 1965, involving the identical Ordinance, the validity of which is being constitutionally attacked in this cause; that the Defendant in this cause, Interstate Circuit, Inc. appealed the decision of the United States District Court for the Northern District of Texas to the United States District Court for the Fifth Circuit in cause no. 23306 as follows: Interstate Circuit, Inc., et al, Appellee v. City of Dallas, Appellee, Appellant, which involved a cross-appeal by the City of Dallas.

Plaintiff would further show the Court that the United States Court of Appeal, Fifth Circuit, the above cause pending before it on January 20, 1966, denied the Motion of Appellees, Interstate Circuit, Inc., et al, for an injunction to enjoin the enforcement of the Ordinance involved herein pending decision on its appeal.

Therefore, this Honorable Court has no jurisdiction to entertain the Petition to relitigate these constitutional issues, which were raised or should have been raised in the trial in Federal Court involving the identical ordinance involved in the case at bar.

[fol. 36] II.

That the Intervention will complicate the issues in this case since the sole question before this Honorable Court is whether or not the Movie Classification Board of City of Dallas correctly classified the movie "Viva Maria", scheduled to be exhibited at the Esquire Theatre in the City of Dallas, Texas, beginning February 17, 1966, and any private contractual agreements between the Interstate Circuit, Inc., as Exhibitor and United Artists Corporation, as Distributor and owner of the District Distribution rights to said film, has no bearing whatsoever on the power of the Movie Classification Board in the enforcement of the Ordi-

nance in question to require the Exhibitor to advertise the film in question as "not suitable for young persons".

III.

That the Ordinance in question does not authorize the Movie Classification Board to suppress the exhibition of motion picture films, but merely limits the power of the Board to determine whether or not a film is "suitable for young persons" or "not suitable for young persons" and regulates the type of advertisement by requiring a film to carry the notation "suitable for young persons" or "not suitable for young persons" when so classified by the Classification Board, to be included in the advertisement.

Wherefore, Premises Considered, Plaintiff, City of Dallas, prays that such Petition in Intervention be stricken.

Respectfully submitted,

N. Alex Bickley, Ted P. MacMaster, Pat Stacy, Jerry Williamson, Attorneys for Plaintiff, City of Dallas, 501 City Hall, Dallas, Texas.

[fol. 37] Certificate of Service Pursuant to Rule 72 (omitted in printing).

[fol. 38]

IN THE 44TH JUDICIAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS
No. 66-1280-B

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC., Defendant.

PLAINTIFF'S FIRST SUPPLEMENTAL PETITION—
Filed February 17, 1966

To the Honorable Judge of Said Court:

Comes Now the City of Dallas, Plaintiff herein, and files this its First Supplemental Petition in answer to Defendant's Cross-Action heretofore filed, and would show the Court:

I.

Plaintiff excepts to Paragraph XIII of Defendant's Cross-Action on the ground that as a matter of law Plaintiff is not required to go into any court of competent jurisdiction to seek a declaratory judgment prior to the enforcement of an ordinance, particularly since the ordinance in question has been held to be valid by the Honorable Sarah T. Hughes, United States District Judge for the Northern District of Texas; and Defendant has appealed said ordinance to the United States Court of Appeals, Fifth Circuit, seeking an injunction to stay enforcement of said ordinance, which has been refused by the United States Court of

[File endorsement omitted]

Appeals on January 20, 1966 (a copy of which order of the District Court for the Northern District of Texas is attached hereto and made a part hereof for all purposes).

Plaintiff and Cross-Defendant would further show the Court that the filing of this suit is based upon facts in Freidman v. Maryland, and in doing so has complied with all requirements as set forth by the Supreme Court of the United States in that case, and that this cause seeks the prompt judicial determination as required by the applicable cases and law.

II.

Plaintiff and Cross-Defendant deny each and every allegation contained in Defendant's and Cross-Plaintiff's Cross-Action, and demand strict proof thereof.

Wherefore, Plaintiff and Cross-Defendant prays that said Cross-Action be in all things denied, and that in respect to same it go hence with its costs, and for such other [fol. 39] and further relief to which it may show itself entitled, either at law or in equity.

Respectfully submitted,

N. Alex Bickley, Ted P. MacMaster, Pat Stacy, Jerry Williamson, Attorneys for Plaintiff & Cross-Defendant, City of Dallas, 501 City Hall, Dallas, Texas 75201, RI-8-9711, Extension 295.

A copy of Plaintiff's First Supplemental Petition has been served upon the Attorney for Defendant and Cross-Plaintiff.

[fol. 39A] [File endorsement omitted]

[fol. 40]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

No. 66-1280-B

CITY OF DALLAS,

vs.

INTERSTATE CIRCUIT, INC.

STATEMENT OF FACTS—TEMPORARY INJUNCTION—
February 17, 1966

Judge Presiding: Honorable A. R. Stout, 40th Judicial District, Ellis County, Texas.

APPEARANCES:

For the Plaintiff: N. Alex Bickley, Ted P. MacMaster, Municipal Bulding, Dallas, Texas.

For the Defendant: Grover Hartt, Edwin Tobolowsky, Ed Creel, Tobolowsky, Hartt, Schlinger & Blalock, 3525 Southland Center, Dallas, Texas.

For the Intervenor: Paul Carrington, Dan McElroy, Robert Mow, Carrington, Johnson & Stephens, Mercantile Bank Building, Dallas, Texas.

[fol. 42]

COLLOQUY BETWEEN COURT AND COUNSEL RE EXHIBITS

Mr. Bickley: If the Court please, we ask the Court to take judicial notice of Ordinance 11284, which is attached to the Plaintiff's Original Petition and which we now introduce in evidence for all purposes, this being the theater classification, motion picture classification ordinance of the City of Dallas. It was passed on November 22, 1965, by the City Council of the City of Dallas.

Mr. Hartt: If the Court please, we do not believe this is a proper subject for judicial notice. We have no objection to a copy of the ordinance being produced, insofar as saying it is a true copy, if that will make any difference to the matter.

Mr. Bickley: We are introducing them in evidence before the Court, Your Honor.

The Court: Can I take judicial notice of an ordinance? I thought you had to identify and prove an ordinance.

Mr. Bickley: We have pled it, we have attached it, we are not at this time introducing it in evidence.

Mr. Hartt: If Your Honor please, we told Mr. MacMaster we would not require the city secretary to come down, if they brought a copy.

(Plaintiff's Exhibits 1 through 6 marked for identification.)

Mr. MacMaster: Your Honor, may I present some documentary evidence? Counsel for defendants and attorneys for plaintiff agree that these instruments can be introduced.

[fol. 43] Mr. Hartt: May I ask you a question? Was the first exhibit 11284?

Mr. MacMaster: That is right. I will call these out. Plaintiff offers as Plaintiff's Exhibit 1 a certified copy of Ordinance 11284 of the City of Dallas. Plaintiff's Exhibit No. 2 is Ordinance 11298, which amended Ordinance 11284 in that the Movie Classification Board could add three

additional members as alternate members of the board. Plaintiff's Exhibit No. 3 is a letter, certified copy of a letter dated January 24, 1966, from the defendant Interstate Circuit, Inc., by Raymond Willie, Vice President and General Manager, addressed to the Dallas Motion Picture Classification Board, in which it is stated that "Pursuant to Section 46A-3(a) of City Ordinance No. 11284, herewith is furnished material required. The undersigned hereby proposes to classify the above film for exhibition in the above theatre for initial exhibition in the City of Dallas as 'suitable for young persons.'" And at the top, "Motion Picture, Viva Maria!" and the theatre where it is proposed to be exhibited is the Esquire Theatre in the City of Dallas. Plaintiff's Exhibit No. 4 is a certified copy of the minutes of the Dallas Motion Picture Classification Board of February 9, 1966, in which the board, it was moved and seconded by a member of the board that the picture, "Viva Maria!" be classified as "Unsuitable for Young Persons," and this motion was adopted and there is a certified copy attached.

[fol. 44] Mr. Carrington: I want to make an exception to that offer in evidence.

Mr. Hartt: We will be doing the same.

Mr. Carrington: The exception I want to make is that insofar as showing what action the board took and limited to that purpose, it may be admissible, but as any evidence whatsoever of the character or quality of the picture or of any action of the board as binding or determining the quality of the picture or whether it should or should not be in any way restricted is not admissible.

Mr. MacMaster: Your Honor, it is being introduced at this time to show the action and classification by the Movie Classification Board.

Mr. Carrington: Limited to that?

Mr. MacMaster: At this time.

Mr. Hartt: If the Court please, Interstate would adopt the same objection made by the intervenor and add further thereto that while we agree that this is a true copy of

what the board did that it does not comply with the requirements of Ordinance 11284 in that it does not say why this picture, "Viva Maria!" is not suitable for exhibition for young persons. Directing the Court's attention to Exhibit No. 1, sub-section (f) of section 46A-1, there are two different reasons in great detail—perhaps even more, depending on how it is broken,—as to why a picture might not be suitable for classification, and this action of the [fol. 45] board does not say that that determination was made and that the present status of this action by the board does not show on what grounds this quasi-administrative or judicial action was taken. Specifically, the describing of brutality, criminal violence, depravity, et cetera, is one ground. Another ground is "Describing or portraying nudity beyond the customary limits—," et cetera. For that additional reason the defendant Interstate objects to the action of the Board insofar as it is reflected in this exhibit.

The Court: I will let him get it in the record subject to your objection and exception.

Mr. Hartt: Thank you, Your Honor.

Mr. MacMaster: We offer as Plaintiff's Exhibit No. 5 a certified copy of an official record of the City of Dallas, being a letter dated February 11, 1966, from the defendant Interstate Circuit, Inc., by Van Alen Hollomon, Secretary, addressed to the Dallas Motion Picture Classification Board, with reference to the motion picture, "Viva Maria!" to be exhibited at the Esquire Theatre, in which it is stated:. "Pursuant to Section 46A-7(a) of City Ordinance No. 11284, the above named exhibitor hereby notifies you of non-acceptance of your classification and advises that the above named exhibitor intends to exhibit the above named film under a classification of 'suitable for young persons.'" And it is from the Interstate Theatre. We offer that as Plaintiff's Exhibit 5.

[fol. 46] Mr. Carrington: Mr. MacMaster, the action of the board, the prior exhibit was introduced at your re-

quest for a limited purpose. All of the records of the City, including this you are now offering, is for the limited purpose of showing only what actions have been taken and not having anything to do with whether a valid ordinance has been entered or whether there has been any right to restrict the showing of this picture or any action that would be evidence on that subject, is that correct?

Mr. Bickley: And for the purpose of showing compliance with the ordinance, Your Honor, yes.

Mr. Carrington: Well, that is not me; that is not my letter, so I can't object to that.

Mr. MacMaster: The ordinance requires certain procedure. We are introducing these instruments to show that the procedure was followed.

Mr. Carrington: And for that limited purpose only?

Mr. Bickley: In other words, we reserve the right to prove what kind of picture is going to be exhibited out there.

Mr. Carrington: Later, not in this connection, is that right?

Mr. MacMaster: That is right. And we offer as Plaintiff's exhibit No. 6—Wait a minute. This should have been Exhibit No. 5; I have reversed exhibits. This should be 5 and the other one should be 6. This is a letter dated February 9, 1966, addressed to Mr. Raymond Willie, Vice [fol. 47] President and General Manager of the Interstate Circuit, Inc., Majestic Theatre Building, Dallas, Texas, from Harold G. Shank, City Secretary, City of Dallas, in which it reads: "Dear Mr. Willie: On February 9, 1966, the Dallas Motion Picture Classification Board met, and a majority of the board was not satisfied that your proposed classification of "Suitable for Young Persons" was proper for the following movies:" and one of them is "Viva Maria!" to be shown at the Esquire Theatre.

Mr. Hartt: If the Court please, as far as the letter being written, the defendant Interstate does not deny the letter was written on the 9th. We would further ask the stipulation to save time, however, so far as the exhibit Mr. MacMaster is just handing to the Court, No. 6, the further

stipulation could be made that it was mailed rather than hand delivered, is that correct? Did you mail the letter?

Mr. Bickley: That is correct.

Mr. Hartt: Then we would like a stipulation that it was received on the 10th of February, the day after it was written and mailed on the 9th.

Mr. Bickley: I think that is correct, Your Honor. We will so stipulate with counsel.

The Court: All right, sir.

Mr. Bickley: Your Honor, at this time we would like to introduce one other exhibit, which would be Plaintiff's Exhibit No. 7, which is a copy of the Plaintiff's Original Petition herein showing the file mark of February 14, 1966.

[fol. 48] (Plaintiff's Exhibit 7 marked for identification.)

Mr. Hartt: If the Court please, the exhibit last numbered, No. 7 I believe?

The Court: Seven.

Mr. Hartt: The copy of the petition to show the file mark, we would ask before making our objection that the plaintiff state the purpose for offering this exhibit. With that statement we may have an objection.

Mr. Bickley: The purpose of the exhibit, Your Honor, is to show compliance with the ordinance which requires that the case be filed within three days after the non-acceptance of classification.

The Court: The petition and filing or just the filing?

Mr. Bickley: Just the filing, for that purpose.

Mr. Hartt: The file mark on February 14, if that is the only thing offered, then we do not object to the mark itself because the petition has not been offered, as we understand. If the petition and mark is offered, we have an objection.

Mr. Bickley: Of course, we offer the petition as a part of the filing to show that an injunction was sought as required by the ordinance, for this limited purpose, not to show that the allegations in the petition are correct. It is

only for the limited purpose of showing compliance with the ordinance.

Mr. Hartt: If the Court please, we ask counsel to particularize which section of the ordinance he is complying [fol. 49] with on this filing. It might help us on our objection and we can otherwise start along.

Mr. Bickley: Your Honor, this is to comply with Section 46A-7 of the ordinance.

Mr. Hartt: In that event then we have an objection as follows: That the petition as filed here in Exhibit 7, together with the file mark, does not comply with the provisions of the ordinance to which counsel just referred, 46A-7. In particular, the sequence of events, as we understand them, required by this ordinance would be that, following the action of the review board denying the classification proposed by an exhibitor and giving a classification of "not suitable," which was done in this case by the letter of February 9, that the exhibitor has two days in which to reply and say he would not accept this changed classification. That was done by part of the documents already offered to the Court—I believe it is No. 6,—and in turn within three days after the non-acceptance from the exhibitor is given to the City Secretary, then the City of Dallas has the burden to come to a District Court of Dallas County and to ask for a judgment affirming the classification of the picture as "not suitable for young persons." We object to this Exhibit No. 7 as offered for that purpose of showing compliance because, as already raised by Special Exceptions filed herein, nowhere in this exhibit, consisting of approximately four pages, plus a copy of the ordinance, or five pages, four, I am sorry, nowhere in this [fol. 50] four page petition is there anything that asks for a district court of Dallas County to determine that the motion picture, "Viva Maria!" is not suitable for young persons in that it would violate either of the two sections of the ordinance we have heretofore mentioned to the Court, summarized and identified briefly as either nudity—

this would be, if the Court please, 46A-1(f),—nudity or criminal depravity. There is not a thing in this pleading—and this exception which the Court is carrying along goes directly to the same subject to which we are now objecting,—because this exhibit here we say does not qualify in any sense of the word, does not state a cause of action that would ask a Court to give the relief sought, which is required of the City by the terms of its own ordinance. If the Court please, this is a unique type of litigation the Court may not be familiar with. The case of Friedman vs. Maryland, which is a fairly recent case in motion pictures,—

The Court: No, I am not. All I have heard and read in these books is "pruient interests" and I don't know what that means.

Mr. Hartt: Friedman vs. Maryland. I have taken the liberty of having a copy of this book brought to the courtroom and I will hand it to the Court, if I may. That is the Friedman case, if the Court would like to look at it at his convenience. Friedman vs. Maryland, as we understand it, is authority for the proposition that any censor board or [fol. 51] anyone who attempts to restrict free communication has the burden, after making such a decision of the censorship or classification, of immediately going into a court and carrying the burden of proof into the court, there to have the court affirm the censor's decision, as it was in Maryland, in this case to affirm the decision of the classification board. In a word, you have got to get a declaratory judgment or an injunction in such terms as would sustain the fact that the picture is either censorable or, in this specific instance here, should be classified. Since there is no pleading on that, we object to this exhibit as an exhibit and we also have our exceptions to carry with it.

The Court: I will let him get it in the record and reserve judgment on it. This would be decisive, wouldn't it?

Mr. Hartt: Beg your pardon:

The Court: This goes to the whole case, does it not?

Mr. Hartt: Well, yes, sir. If the Court please, when we say it would be decisive, we would simply say if it is kept out, we think it is decisive. We think there are other things we think the Court might decide on in our favor. It is not the only issue.

The Court: I will let him get it in the record. I will reserve ruling on it.

Mr. Hartt: Thank you.

Mr. Bickley: At this time, Your Honor, we will have Mr. John Gilliland.

[fol. 52] JOHN GILLILAND, after having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Bickley:

Q. State your name, please.

A. John D. Gilliland.

Q. Where do you live, Mr. Gilliland?

A. 8642 Hackney Lane, Dallas, Texas.

Q. You have previously been sworn in this case, have you not?

A. Yes, sir.

Q. And what is your profession, Mr. Gilliland?

A. I am an attorney.

Q. And how long have you practiced law?

A. I was licensed in 1958.

Q. Where do you practice?

A. Matthews & Matthews, Adolphus Tower.

Q. In the City of Dallas?

A. Yes, sir.

Q. What connection do you have with the Motion Picture Classification Board of the City of Dallas?

A. I am a member of the board, appointed by the City Council.

Q. And are you vice-chairman of that board?

A. Yes, sir.

Q. In that connection, do you recall the meeting of the board at which the request of Interstate Theatre, dated February 11, 1966, was presented to the board concerning a picture entitled "Viva Maria!"?

[fol. 53] A. Yes, sir.

Q. Are you familiar with the action taken by the board at that time?

A. On the initial request?

Q. On the initial request.

A. I believe the board requested a screening.

Q. And can you tell us why the board requested a screening?

Mr. Hartt: If the Court please, we are here on the action of the board, not the interpretation of a chairman, vice-chairman or any members of the board. To accommodate parties, we have stipulated that the minutes which they offered correctly show the action of the board. We object to this witness attempting to explain, qualify or give any extenuating comments that would expand or change the action of the board as recorded officially and already in evidence. In other words, the action of the board is in evidence. It is the best evidence and it speaks for itself. This witness is not in a position to explain, qualify or give it a different interpretation. There is no need for it.

The Court: I overrule it.

Mr. Hartt: Note our exception.

Q. Will you answer the question, please?

A. Your question was why did the board request a screening?

Q. Yes.

A. Based on the information submitted by the exhibitor, [fol. 54] it raised a question in the minds of some of the members and we felt that screening would be necessary for us to pass judgment on it.

Mr. Hartt: If the Court please, without continuing to pop up here and object, may I have a continuing exception

to this entire line regarding the board action?

The Court: Yes, yes.

Mr. Hartt: Thank you.

Q. By "the information submitted to the board," are you referring to the attachment to Plaintiff's Exhibit No. 3, which I now show you?

A. Yes, sir, the synopsis which is attached to the request.

Mr. Bickley: And which synopsis we now offer in evidence, Your Honor, as an admission by the defendants themselves as to the nature of the movie.

The Court: May I see it?

Mr. Bickley: Yes, sir.

Mr. Hartt: If the Court please, this is now Exhibit No. 8? I have an objection when the Court is ready to hear it.

The Court: What was "Tom Jones" about? Go ahead.

Mr. Hartt: If the Court please, our objection that we are about to make, we now make to this exhibit. As we understand, it was offered for the purpose of showing the nature of the picture. We object to it being received for that purpose. We would say, however, that this is part of [fol. 55] the papers given to the City, but insofar as the motion picture "Viva Maria!" is concerned, we would submit that it, and it alone, is the best evidence of what the picture is, and that if this is an attempt to evade or avoid having this Court review that picture before ruling, that it would be improper, and we object to it. In other words, the burden would be to see the picture and not to have, as was said by Judge Brown in the Empire case, a compurgation where dozens of people come down and tell you what they saw. The picture itself must be seen. If this is an attempt to avoid that, we object to it. As a synopsis given trying to comply with the ordinance, we do not object to it.

Mr. Bickley: If it please the Court, I agree with counsel's contention here that the Court see this movie. I think

it would be available this afternoon for the Court to see it, would it not?

Mr. Hartt: I don't know whether you have an operator.

Mr. Bickley: Since it is showing at one of the local movie houses, would it not be available, Mr. Hartt?

Mr. Hartt: The Court can go see it any time the Court wants to. We have no objection to that.

The Court: I will overrule your objection and let him offer it.

Mr. Hartt: This Court, as we understand the law, is restrained to acting in the courtroom and not going about the City, so it would be necessary to have it brought here [fol. 56] as a part of their burden of proof. If they want to do that, we will produce the film for them if they have both an operator and a machine.

Mr. Bickley: We are giving you notice to produce the film.

Mr. McElroy: We would, in behalf of the intervenor, join Interstate's objection to the tender of that exhibit and for the further reason that it was offered as an admission and it did not come from the intervenor, United Artists.

The Court: I will overrule it.

(Plaintiff's Exhibit 8 marked for identification.)

The Court: I will let him offer it as part of his case. There is a striptease referred to; I don't know whether it is a work of art.

Mr. Hartt: If the Court please, we would ask our intervenor, who owns the general rights to this print, to help us produce a copy. The copy which we have licensed is being used today in a theatre, but I am sure the intervenor will cooperate with us and try to get a copy as soon as one is available. We call upon them to aid the City, so whenever you want it brought to the courtroom, we will bring one.

Mr. MacMaster: We suggest that if they can produce the film, they bring it at noon today. It will probably last

about an hour and a half and I think the case will wind up an hour after that when the Court sees the film.

The Court: All that is before me right now, he has of-
[fol. 57] fered the exhibit, you objected and I overrule it.

Mr. Hartt: Note our exception.

The Court: He calls on you to produce the film.

Mr. Bickley: If it please the Court, I'd like to ask counsel if it would be possible—it is ten o'clock at this time—to produce the film before the showing starts this afternoon at the theatre itself. Would that be possible? We have this practical problem in this case, Your Honor, that we need a ruling from this Court one way or the other by tomorrow, which is the fifth day after the filing of the case, and so we would like for this to be produced in time that the Court might have it in order that it might be in evidence before that time so that the Court might act upon it.

Mr. Hartt: If the Court please, we hate to be a party to our own detriment. We are willing to cooperate. This is the first time we have been asked to produce this film. This film in this instance here today, this motion picture, is a copyright item licensed for exhibition here and will be shown at a theatre this afternoon, the exact time I do not know. I can find out. But it needs to be there, be prepared, wound and ready for projection in that theatre. If they wanted a copy of this film to be brought here and examined in this courtroom, they could have asked for it Monday or some other time. They haven't done it until now. When they come to bring this picture to this court for exhibition, they do have certain mechanical problems [fol. 58] which, as the plaintiff, they must face. One of them is a projection machine and an operator. Now, this film is a valuable item, and frankly it is substantially more than an eight millimeter pocket motion picture, and to get this set up and operate it, we say, is a major item. If they ask us to bring it here this afternoon, we will get it here as soon as we can get a copy other than the one in use in the theatre. We will try to do that. But in bringing it

here, it will have to be projected in this courtroom or someplace the Court designates; because being in trial in this court, we understand that this court needs to perform its judicial functions here in the courtroom and is not in a position, as we say, to go about and have a jury view or court view it away from the courthouse, and we have a brief that I think will sustain that, if the Court wishes that to be argued either now or at a later time.

The Court: I am inclined to agree with his statement that whatever exhibition is made, if any, should be made in the courtroom or courthouse.

Mr. Bickley: Well, I am inclined to agree with counsel in that respect, Your Honor, except by stipulation of parties and with consent of the Court I think it could be viewed at the theatre viewing room itself, and it would save all parties certainly a lot of time and money and trouble, if the Court so desired and counsel would agree.

Mr. Hartt: If the Court please, I hate to be disagreeable, but I am unable to concede to that, as it is a part of [fol. 59] the plaintiff's burden of proof and the plaintiff has been aware of the problem for sometime of having to get themselves equipped to show the pictures. If they are not prepared for it, we are not in a position to agree to it.

The Court: All right, sir.

Mr. Bickley: Are you prepared or will counsel produce the film at the time the Court suggests?

Mr. Hartt: Of course, insofar as possible I am going to do what the Court directs, and when the Court tells me to have a copy here, I am going to try to do exactly that. I would ask the Court now before making that order to bear in mind we do have this exhibition scheduled. In other words, if we can get another print here, we can bring one down and leave it for a day or so, if the Court wants it, but if the Court says, "Bring this down and put it in evidence and keep it," we'd like to bring it down whenever the Court wants it and have counsel project it with his operator and machine wherever he wants to show it in the courtroom and have permission to withdraw that exhibit

at a later time and produce it as many times as it may go to an appellate court, but not have it impounded and tied up for a long period of time. These prints are duplicates and one would do as well as another.

Mr. Bickley: We don't intend to impound this motion picture.

The Court: Well, I don't know. Have the thing here by two o'clock.

[fol. 60] Mr. Hartt: If the Court please, I need to make some telephone calls before I can advise the Court on that.

The Court: Suppose we take a little recess.

Mr. Carrington: May I make a suggestion here first? This petition of the City, as I understand it, is not based on any request that the Court determine that this picture is or is not suitable for young people. This petition of the City is not any request for a court determination of that subject. The Supreme Court of the United States, as counsel has already said, has decided that unless the Court does decide that, it can't be decided; in other words, that a board cannot make such a determination constitutionally and finally. Now, that would be binding and we have cases to submit to that proposition. This is no pleading here, there has been no pleading within the five day period under this ordinance requesting the relief that the City is now asking. They are asking for a Court determination that the ordinance providing for a board and for a board determination entitled them to an injunction from this Court, period. That is the substance of their complaint. They will fail under the Supreme Court of the United States decisions because the Court will not and should not determine that the determination of the board is binding on this Court. The case is that simple. To complicate it now with all of this determination by the Court is completely beyond their pleading, is completely a non sequitur as far as this case now filed is concerned, and we object [fol. 61] for that reason.

Mr. Bickley: If it please the Court, in answer to the objection, I'd like to state to the Court this: The ordinance

requires that we file in this Court for an injunction and that we enjoin them from exhibiting this picture under a contrary classification than that made by the board. The Supreme Court says what rules we shall follow in presenting our evidence and what our burden of proof is to get that injunction, and this is the thing that we intend to do, is to comply with that burden of proof and comply with the rules of evidence in getting the injunction. We have filed for the injunction, and the rules of evidence we intend to comply with in order that the Court might grant the injunction.

The Court: Well, you in effect now are calling on him to produce, as I understand it, as a matter of evidence, what is in his possession?

Mr. Bickley: That is correct.

The Court: I thought he was going to show some disposition to comply with it. I overrule the objection.

Mr. Hartt: If the Court please, I'd like to be heard further, if I may, on that same ruling.

The Court: Sure.

Mr. Hartt: By carrying these exceptions along which we have here, we have come to the pass we need to look at them again, if we may. Here is the problem: The time table the City has set up requires that they file suit within [fol. 62] three days and get an injunction in five days. Now, the petition which we have—and exceptions raise this—says in effect—and also my objection to Exhibit No. 7 said that this petition which is filed here objects to the advertising of the picture alone. There is not a scintilla in that entire petition now before this Court that asks for the relief, that asks this Court to determine that this motion picture is not suitable. They have passed a limitation period. They cannot now go back there. If they seek to amend, like amending on a statutory limitation, they are stating a new cause of action. The time to plead that expired Monday, February 14.

The Court: Say that again. That it was unsuitable, or to state the reason for it?

Mr. Hartt: If the Court please, sometimes the lawyer gets too close to his lawsuit. I may be. The Friedman case, as Mr. Carrington has just said, in effect requires that after a classification procedure such as we had in this suit, that any time anyone restricts free speech as a censor board or classifying board, that the classifying board or agency has the burden to immediately go to a Court of competent jurisdiction and get a declaratory judgment or injunction. I am using those terms out a little bit, but to get an affirmance of their decision that the subject material is subject to censorship. Now, that was the Friedman case. I can read from that if the Court wishes, to say exactly that thought. Now, this suit which is filed here on Monday [fol. 63] of this week, nowhere in a single paragraph asks that a determination be made that the picture, "Viva Maria!" be found not suitable for exhibition to young people. To the contrary, the only relief which is sought by the City in the petition before this Court is that a temporary and permanent injunction be granted against advertising—not showing—advertising the picture as suitable for young people. Now, there is a distinct and major difference. It is possible to take a picture so harmless as "Bambi" and have an injunction suit riding such as this one here. In other words, before this Court should give any injunction or any Court should give any injunction about the advertising, the crucial fact determining the whole matter should be "Is the picture itself not suitable for exhibition to young people?" If the Court will scan through that petition, that relief is not asked for anywhere, starting with Paragraph One on through. Now, failing that kind of pleading, then they have missed their three day limitation found in their own ordinance found in Section 46A-7, subsection 1, and their suit has not been filed and therefore their entire suit for a temporary injunction really is moot because they haven't followed their own procedures.

The Court: Oh, I overrule that objection, Counselor.

Mr. Hartt: Well, note our exception, if the Court please. Now we get to the point of having a recess and seeing if we can get a copy of the picture.

The Court: All right. Take fifteen minutes.

[fol. 64] (Court was in recess, after which time the following proceedings were had:)

Mr. McElroy: Your Honor, we have a report to make. We have contacted the local branch office of United Artists Corporation and have been advised that there is but one print of "Viva Maria!" within the City of Dallas. It is that print presently at the Esquire Theatre. We have no scheduled date for another print of "Viva Maria!" to arrive in Dallas, though realistically we do expect one next week. I do not know what day next week.

Mr. Bickley: If it please the Court, the one print is not being used in the morning hours; the theatre is not open in the morning hours. The first run starts this afternoon, as I understand it, about one or two o'clock. And so I see no reason why it cannot be viewed in the morning hours, even though there is only one print.

Mr. Hartt: If the Court please, we can bring the print down here now but we need to get it back out there. I hate to do a useless act; the law hardly ever requires a useless act to be done. If they don't have a machine and projectionist, operator, to do the tote and carry exercise is unnecessary. We can bring it down tomorrow morning if they have a projection machine here and an operator; we can bring it down Monday morning; whatever the Court wants.

Mr. Bickley: If it please the Court, the projectionist and the machine being within their control, we assume [fol. 65] they will supply them. If not, we shall issue a subpoena in order that he might be subpoenaed over here with his machine and with his print and with his movie and with the equipment to show it. Now, we submit to the Court and to counsel that the practical thing to do, and I

think it could be done if the Court so ruled, would be to show it in their viewing room which they have, where they have the equipment, they have the projector, they have everything available involved in this particular lawsuit.

Mr. Hartt: If the Court please, a recent case by a New York District Court pointed out on a custom matter the government's position there as being, in effect, if you would agree to this it would simplify things a whole lot for us. Now, obviously anybody who rolls over and plays dead, there is no problems, but when we are faced with an equity matter and they ask injunctive relief and they are plaintiffs, we do not feel that we have any duty, legal or equitable, to participate in having a judgment entered against ourselves. We come here as officers of this court, doing exactly what the Court wants, but if they come to the courthouse as plaintiffs, they come here seeking relief under the rules of procedure, and rules of procedure require that the Court try, and the statutes require him to try a case in the courthouse. If they are not prepared to meet their burden as plaintiff, we as defendants do not need to preside over, as Churchill said, the dissolution of the Empire or our own judgment against us. We have a right to stand [fol. 66] here and ask them to prove their case, not with our equipment or anything else. We will cooperate and bring a print, but if the Court is not aware of the difficulty and sometimes the problems the plaintiff faces, the plaintiff certainly well knew it when he filed this suit and knew it in advance. These films need to be shown in this courtroom. They need to get themselves—like any lawyer has a slide projector with slides—a motion picture projector if it is motion pictures. They need one of those and they need an operator who is competent to run it and they ought to have them here as part of their burden to prove their case. We see no reason why we should in effect give them that which they know they need as a part of their own prima facie case. This is not a matter of discovery. Evidence we produce for them and we will produce exactly a print of the film at the time the Court says get it here,

but as the Court is well aware, you cannot go and take expert opinions from a doctor or an expert and not pay him for his services and his work, and a subpoena, they threaten us with that, to come here and bring that kind of machine by subpoena, the drayage cost and these other items are all ones which they must stand before the subpoena would be good. If they want to get a projector, those things can be bought or they can acquire one, but we certainly object to it. We will bring the print here in the morning, if the Court directs.

The Court: Have you got any other proof that you want [fol. 67] to offer?

Mr. Bickley: Yes, we do have, Your Honor.

The Court: Proceed.

Q. (By Mr. Bickley) Mr. Gilliland, what did the board do following the submission, or following their first meeting on the classification of the film, "Viva Maria!"?

A. Well, the board voted to have the movie screened and we later received notice that a screening would be held. I believe it was at South Harwood, General Films' distributor's screening room over there. I believe five members of the board met on February 7, Monday, and at that time viewed the film.

Mr. Bickley: Will counsel stipulate that the filming and the viewing of the film was by agreement with counsel and with their client at a time and place they made it available?

Mr. Hartt: If the Court please, I am not aware that it is or isn't. May I speak with counsel for a moment? If the Court please, I cannot have it confirmed. Let me have it read back and I think we will agree to it.

Court Reporter: "Will counsel stipulate that the filming and the viewing of the film was by agreement with counsel and with their client at a time and place they made it available?"

Mr. Hartt: We agree the client apparently produced it at the time and place. I was not personally aware of it.

Q. Then at the time and place the film was made available, did you and others view that film?

[fol. 68] A. Yes, sir.

Mr. Carrington: If the Court please, I would like for the intervenor to make an exception which may run to more than one question. In the first place, the objection we are making to the use of this witness to determine what the board did is an effort to vary the records of the board itself as introduced in evidence here and that is not admissible, enlarging or varying by parole testimony those records. Secondly and also of the essence is the objection that the action of the board cannot control or guide or even be admissible on the merits of whether this is or is not a properly objectionable picture that ought to be restrained in its exhibition, and this introduction of evidence, or any evidence as to what the board did or what individual members of the board thought with reference to it or how or why they acted is inadmissible for that reason. I would like both of those objections to be made and acted on by the Court and then see whether he is going to let this witness proceed.

The Court: Overrule it.

Mr. Carrington: We don't need to repeat it?

The Court: No, sir, it will be to all his testimony.

Mr. Hartt: For record purposes we adopt the objection, and I presume the same ruling of the Court?

The Court: All right, sir.

Mr. Hartt: Thank you.

Q. Did you and several others view the film at that time?

[fol. 69] A. Yes, sir.

Q. Members of the Motion Picture Classification Board of the City of Dallas?

A. Yes, sir.

Q. Would you tell the Court the nature of the film that you saw entitled "Viva Maria!" at that showing?

A. Would you like for me to take it from the beginning and just explain what the story was about?

Q. Tell what you saw in the film, yes.

Mr. Hartt: If the Court please, the Court has heard this before but I would like to hit the question of best evidence and also relate this exact quote from Judge Brown's opinion where similar proceedings were followed before Judge Davidson. The picture is the best evidence and speaks for itself. In the Empire case Judge Davidson let this testimony come in. Judge Brown called it "By a sort of modern compurgation he allowed each side to produce three witnesses to describe the movie and its questionable scenes. This, as to be expected, was about as revealing as program notes to a symphony concert." We are going far away here on this kind of item and we do object to it because the picture is the best evidence.

Mr. Bickley: If it please the Court, I agree with him. I think the picture is the best evidence and I think the Court will have to see that picture in order to rule upon it, and I think the other will only be supplementary to it, [fol. 70] and that is the reason we ask them to produce the picture in order that the Court might see it.

The Court: I overrule the objection.

Q. Will you explain the movie as you saw it?

Mr. Hartt: Note our exception.

A. All right. In the beginning the scene was, I believe, in England, early twentieth century. To make a long story short, a character played by Brigitte Bardot was the daughter of an Irishman who was fighting the English. His main job seemed to be blowing up buildings and bridges and railroad trestles and whatever would aggravate the English. In one of these explosion scenes the father was caught by the authorities and shot to death and Maria was on her own from then on. She at that time, up to that time had been a boy, in effect; she had worn boy's clothes and had carried on all activities of a boy. In her

travels after her father was killed she came across a carnival, a traveling carnival of the kind you see with wagons, with different acts. It was kind of a circus on wheels. She crept into the wagon of one of the participants in the carnival whose name was also Maria and who had a song and dance act. They became friends and the carnival adopted Maria No. 1, we will say, and then a team of two, Maria and Maria, became a song and dance act. Now, the striptease referred to in the synopsis occurred when the character played by Brigitte Bardot accidentally tore her dress during her first song and dance act. One thing led to an- [fol. 71] other and the act developed into this, into a rather sophisticated striptease. That in itself was not objectionable. There was no nudity or anything involved there. However, Maria became aware that she was a woman, and I think this is one of the major factors which caused the board to decide as it did. She asked her partner, the other Maria, to explain to her what about love, and Maria did explain to her what she knew about love, which consisted of going to bed with a couple or three men in her past and the experiences she had had. With this—And this took place at a party in which all the members of the carnival were present, and strangers also were present. With this, to make a long story short, Maria went off with three strange men and returned the next morning with her clothes torn and explained to her friend Maria how great it was, and then she began to keep a list of names on the wall of the wagon that she travelled in, kept a running account of the men she went to bed with. This more or less continued throughout the movie and the last man that she kissed good-by—I will jump ahead for a moment—was another man apparently whom she had gone to bed with. Anyway, at a point I guess about midway in the picture the carnival became involved in a revolution. It looked like a Mexican revolution where there was one man, whose name I don't recall, who had control of the peasants in the area. There was also a general, a Napoleonic type character who was under the control of the

[fol. 72] leader, and a clergyman who apparently was the head priest or head bishop, whatever his title was, there in the area. These were the three main characters in the revolution. The leader of the revolutionary forces or the peasants was captured and Maria No. 2, or the friend of Brigitte Bardot, fell in love with this man. She partially undressed herself in the jail when her man was in the stocks there and tore his shirt off and from then on it was left to the imagination. But he was killed and then the second Maria took up the cause for him, and from that point on it was her leading the peasants and then the character played by Brigitte, having had a past experience in explosives, took up with her and they ultimately defeated the tyrannical rule of the leader, whoever it was, of the government forces. At one point it seemed that everything was getting out of control as far as the government was concerned and the priest took over. He and one other priest commandeered a train or, we will say, stopped a train on which the carnival people and the peasants were riding on their way to their final battle. Once on the train he captured at gunpoint the two Marias, took the car they were riding in and the engine and went—well, it wasn't a castle but it was the ranchero where this government leader lived. He took them then down to a dungeon and engineered a torture process of putting them on a—I forget what they call it; the rack we will say,—and torturing them. Now, he wanted to get them to sign a confession. The clergy, as I recall, when they were first brought in, [fol. 73] the clergy were all in black hoods similar to the Ku Klux Klan in white. They took them down to the dungeon and all participated in this torture process to get them to sign this confession. They got out of this scrape and ultimately won the battle, with a period in there of no romance particularly. But again the final scene where the morning after the night before the carnival rides off in the sunset, so to speak, and Maria embraces her last lover and trots on off. And that generally was the picture.

Q. The basis for your vote and for the others on that, was it based upon any particular scene in the movie or the movie as a whole?

A. No particular scene guided our judgment, no, sir.

Q. Are you a man of family?

A. Yes, sir.

Q. How many children do you have?

A. Two boys.

Q. And in your opinion as a father, would this tend to affect the behavior of young people below the age of sixteen years?

Mr. Hartt: If the Court please, we object to the qualifying of this witness by simple paternity as showing he has any particular skill or ability other than the fact that he, like most people are, is the father of minor children. That does not qualify him to give an opinion on this subject. He has been qualified as a lawyer. If he has any particular skill to start talking about how this affects other [fol. 74] people, he has not yet shown it, and we submit that the fact of being a father alone does not qualify him to give any expert opinion on this subject as to how it would affect or effect other children. Now, we will take the witness on voir dire, if you wish, or counsel can develop his qualifications, but on the qualification as stated, we object to the testimony.

Mr. McElroy: We join in that objection.

The Court: I overrule it.

Mr. Hartt: Note our exception.

A. Yes, I think it would influence young children.

Q. And how many members of the board actually viewed that film?

A. Five members.

Q. Was the opinion of these five members in voting concerning this film a unanimous vote?

A. As far as I recall, yes, sir.

Q. Now, you have been a member of this board since it was actually appointed by the City Council, have you not?

A. Yes, sir.

Q. How many films in general have you had before this board? Do you know?

A. Roughly about two hundred and twenty films.

Q. Two hundred twenty have been submitted?

A. Yes, sir, that is a rough estimate.

Q. Of that two hundred twenty, how many have the board on their own motion declared to be not suitable for young persons? If you know.

[fol. 75] Mr. McElroy: We object to that as being wholly immaterial and irrelevant.

The Court: I will overrule it as to whether they are arbitrary and that phase of it.

A. I believe about a half dozen films have been classified as unsuitable.

Q. Have you had others that have been classified as not suitable by the industry itself?

A. Yes.

Q. So the half dozen you are talking about are those you disagreed with the industry or the exhibitor?

A. Yes, sir.

Q. All right. Now, for purposes of the record, do you know whether or not the producer of this film, as Mr. Carrington and his firm are representing, whether or not they submit any classifications to the board, or is it the local exhibitor that does that? Do you know?

A. I couldn't answer that, no, sir.

Q. All right. Then following the seeing of the picture, did the board authorize the secretary of the board to notify the exhibitor of the board's designation?

A. Yes, sir.

Q. And the letter of the 9th of February, being Exhibit No. 6,—I want to get it straight whether it is five or six. May it please the Court and for counsel, we'd like to get the exhibit numbers on these straightened out. The one of [fol. 76] the 9th of February should be No. 5 and the 11th of February No. 6.

(Plaintiff's Exhibit 5 marked as Plaintiff's Exhibit 6; Plaintiff's Exhibit 6 marked as Plaintiff's Exhibit 5.)

Mr. Hartt: For the purpose of the record, let's state that, please, so the reporter will understand what is done.

Mr. Bickley: For the purpose of the record, the letter dated February 9, 1966, addressed to Mr. Raymond Willie, Vice-president and general manager of Interstate Circuit, Inc., signed by Harold G. Shank, City Secretary, is Plaintiff's Exhibit No. 5. The letter of February 11, signed by Mr. Van Alen Hollomon as secretary of Interstate Circuit, Inc., to the Dallas Motion Picture Classification Board is Plaintiff's Exhibit No. 6.

Q. I show you Plaintiff's Exhibit No. 5 and ask you if that was in accordance, the letter was written in accordance with the desires of the board or as the board indicated?

A. Yes, sir.

Q. Subsequent to that time, did the board take any further action concerning this or was the subsequent action that of the attorneys, as far as you know?

A. As far as I know, no further action was had by the board.

Q. Were you aware of the letter of February 11, 1966, being Plaintiff's Exhibit No. 6, stating—from Interstate Circuit, Inc.,—stating they did not desire to comply with the classification set by the board?

A. This was called to our attention at the last meeting, [fol. 77] which I think was on the 15th of this month, if I am not mistaken.

(Plaintiff's Exhibit 9 marked for identification.)

Q. I show you an advertisement in the newspaper of the Dallas Morning News, dated February 16, 1966, which has been marked as Plaintiff's Exhibit No. 9, and ask you if that is the movie about which you have been testifying, the one that is advertised there?

A. It appears to be, yes, sir.

Mr. Bickley: We offer it in evidence, Your Honor.

Mr. Hartt: If the Court please, we understand that only that portion is to be offered. If counsel wishes to mark it, it might be more convenient for the record, but we have no objection to that.

Mr. Bickley: It is marked in red. I call the attention of the Court to the fact that it contains no classification whatsoever. No further questions.

Cross examination.

By Mr. Hartt:

Q. Mr. Gilliland, the board did not make a specific finding in its exhibit at all as to what part of this ordinance caused this picture to be classified as not suitable, did it? For record purposes, I am handing you Plaintiff's Exhibit No. 4, that portion here which I will read: "The movie 'Viva Maria!' (Esquire) heretofore taken under advisement for screening, was again called. After discussion, it was moved by Reverend Maceo and seconded by Mrs. Ellis [fol. 78] that the movie 'Viva Maria!' be classified as 'Unsuitable for Young Persons.' Motion carried, Mrs. Ornish not voting." Is that correct?

A. Yes, sir.

Q. As a matter of fact, you made an error right there, didn't you, sir?

A. How is that?

Q. Well, there is no classification "Unsuitable for Young Persons" in your ordinance, is there?

A. No, sir, it is "Not suitable."

Q. But that was the only action that the board took?

A. On this movie, yes, sir.

Q. Then so far as this picture is concerned,—if the Court please, before starting this line of interrogation, I do not wish to waive my objections by going into it. May I proceed under that presumption?

The Court: I think the law gives you that right.

Mr. Hartt: It is my understanding, but I want to be sure we understand each other on it.

Mr. Bickley: We think the law applies, however, it applies, to any interrogation he might make.

The Court: Proceed. I can't grant you any immunity.

Q. The action of the board did not find this picture to be "describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the board, likely to incite or encourage crime or delinquency on the part of young persons," did it?

[fol. 79] A. The minutes do not state that language, no, sir.

Q. As a matter of fact, back to your own opinion from viewing that picture, you do not consider it to encourage or incite crime or delinquency on the part of young persons, do you?

A. Well, I think the ordinance talks about the judgment of the board, if the movie tends to do these things. The board has to rule on this basis. Now, if you are asking me personally,—

Q. Yes, sir.

A. —I think, as far as the violence portion goes, when the clergy got tangled up in it really was the only thing, as far as violence goes. That was not very good as far as I was concerned because it really in a sense okayed violence because the clergy really was the perpetrators of the violence. In that sense I think it falls under that portion. At least that was my opinion.

Q. Wouldn't it be fair to say that that portion was considered by you to be sacrilegious?

A. I don't think of it in that sense myself, but I am sure that entered into it.

Q. You are sure that entered into it. Thank you. This picture had a lot of what could be called spoofing or poking of fun, didn't it?

A. Yes, there was some of that.

Q. As a matter of fact, that was substantially in it all the way through?

A. More so in some parts than in others.

[fol. 80] Q. Well, at one time for example didn't we find when the revolution was going real good and there was sandbags, it looked like, in front of the bank and someone threw an explosive, when it exploded, instead of being sand, it was gold coins that blew all over the street?

A. Right.

Q. You don't think that would cause anybody to use gold coins for a sand bag filler?

A. No, sir.

Q. And the sort of dove of peace air force in there could be a spoof? It was a little pigeon that flew around and carried grenades to where they needed to be dropped?

Mr. Bickley: I am not sure I know what counsel means by "spoof." I don't know whether the witness does or not.

The Court: Well, all in fun, I take it.

Q. They were inducing laughter and kidding people at large, were they not?

A. Yes, sir.

Q. In other words, you don't really think anybody used a dove as transporting grenades to where a machine gun nest was, do you?

A. It seems a little far fetched.

Q. And that is what would be gleaned by anybody watching that picture, isn't that true?

A. I am sure that would be true.

Q. There was also a great experiment about a rifle shooting around a corner. That was also some pretty good fun?

[fol. 81] A. A shotgun, yes, sir.

Q. Shotgun. All right.

A. Yes, sir.

Q. It had a big bent barrel, about a ninety degree turn, is that correct?

A. Yes, sir.

Q. There was some nude statuary in the house of this landowner where the girls were taken, is that not true?

A. I believe that is correct.

The Court: There was what?

Q. Nude statuary. Did that statuary offend the board? Those female forms in marble or plaster?

A. I can't speak for anyone else. It didn't offend me; I can say that.

Q. Did you find this picture to describe or portray nudity beyond the customary limits of candor?

A. Not nudity; sexual promiscuity.

Q. So far as sexual promiscuity, I believe you used the phrase that it was left to your imagination after the girl returned from the night at the carnival, is that not true?

A. Yes, sir, I would say that.

Q. As a matter of fact, you did not see any actual love making between, as you said, the first Maria and any of the men in the picture at any time, did you?

A. Actual love making, no, sir.

Q. All right. And it was only a matter of imagination [fol. 82] each time, wasn't it?

A. Yes, sir.

Q. Did you ever see any other Brigitte Bardot pictures such as "And God Created Woman"?

A. I missed that one.

Q. That was the first picture she made some years ago. Did the fact she was in the picture influence the board?

Mr. Bickley: May it please the Court, we think this is immaterial and irrelevant as to what other pictures she might have made.

The Court: I overrule it.

Mr. Bickley: Note our exception.

A. I don't think just the fact she was an actress in the movie had anything to do with it, no, sir. It didn't in my mind, as far as that goes.

Q. This picture was made in color, was it not?

A. Yes, sir.

Q. And the scenery was generally pretty, was it not?

A. Yes, sir.

Q. The photography was good?

A. I thought so.

Q. And in summary you might say it did have some artistic value, did it not?

A. I think so.

Mr. Hartt: I believe that is all, Your Honor.

[fol. 83] Cross examination.

By Mr. McElroy:

Q. Mr. Gilliland, as I understand, there are two aspects of the movie which at least in your mind you have found objectionable. One such portion of the movie had to do with the clergy and the violence and the other had to do with sexual promiscuity, is that not correct?

A. Yes, sir.

Q. Now, with respect to the clergy and the violence and your feeling that there was something sacrilegious about it, isn't it a fact that all of the violence the clergy was involved in was farcical?

A. Farcical, you said?

Q. Yes.

A. I think part of it was, yes, sir, I believe so.

Q. Well, for instance, when they tried to squeeze the girl's head in the vise, what happened to the vise?

A. The vise broke. I remember that.

Q. When the clergymen would go to get an instrument of torture, what would happen to the clergyman?

A. I remember when they were trying to get them set up, apparently they were pretty clumsy at the job because the clergyman would fall down or break something or something along those lines. I don't recall exactly what happened.

Q. Or the trap they were going to get to put on one of the girls would in effect trap the clergyman, would it not?

A. That happened.

[fol. 84] Q. And they went to get tongs with which they were going to torture the girls and the tongs came apart, did they not?

A. I believe that happened too, yes, sir.

Q. And you did not consider that clergy scene and the would-be torture chamber as being a farce, a big spoof?

A. Those particular portions you described, yes, sir; I think it was comical, I will put it that way.

Q. Now then, we get to the question of sexual promiscuity. You said that she put a list of—"she" being one or the other of the Marias—had a list of names of the men with whom she had been to bed?

A. Yes, sir.

Q. There was none of the going to bed with men shown in the movie in any respect, was there?

A. No, sir.

Q. So you were assuming or concluding that that is what the list of names was?

A. Yes, sir.

Q. And the final scene when you say the carnival goes away the next morning and one of the Marias is kissing a man good by,—

A. Right.

Q. —you said that that was the man with whom she had been in bed the night before, did you not?

A. I believe so, yes, sir.

Q. What in the movie gave you that impression?

A. As I recall, I think her clothes were torn again some-[fol. 85] what at that time. It left the impression of being another one of the many during the course of the movie.

Q. See if this is in accordance with your recollection of this particular scene. The battle is won, the revolution is over, the poor clergyman is going down the stairs holding his head in his hands, so to speak, and that cuts out there, does it not, and the next scene of the movie picks up the next morning with one of the Marias in a crowd in broad daylight as the carnival leaves town.

A. Correct.

Q. She leaves the crowd, gets on the carnival wagon and the carnival leaves town. That is an accurate portrayal of what you saw, is it not?

A. As I recall, yes, sir.

Q. You are vice-chairman of the Motion Picture Classification Board, as I understand it?

A. That is correct.

Q. Do you know of any procedure in the Dallas Motion Picture Classification Ordinance that provides for any notice of any character as to any action to be taken by the board to be given to a distributor of the film being reviewed?

A. I don't recall whether the distributor is to receive notice or not.

Q. Do you have any personal knowledge—Well, as a matter of fact, you know for a fact, do you not, that with respect to the picture "Viva Maria!" the board itself, act-
[fol. 86] ing through the City Secretary or any other official member, gave no notice of the action taken by the board in classifying the picture, is that not correct?

A. Now, by the board itself, I know the City Secretary wrote a letter.

Q. And you know he wrote a letter to Interstate Circuit, the exhibitor, do you not?

A. Yes, sir.

Q. And that letter has been marked in evidence here this morning?

A. The same letter, yes, sir.

Q. Do you not also know, as a fact, sir, that the City Secretary sent no notice to United Artists in connection with "Viva Maria!"?

A. I don't know whether one was sent or not, honestly.

Q. You have no knowledge of it at all?

A. No, sir, I don't.

Q. As a lawyer and as vice-chairman of the board additionally, I would hazard the guess you have studied the Dallas ordinance rather carefully?

A. I have studied the ordinance insofar as the duties of the board are spelled out.

Q. Right. In that studying of the ordinance, did you find there to be any duty whatsoever on the board to notify a distributor of actions taken by the board?

Mr. Bickley: If it please the Court, I think this line of questioning could be shortened. I think the ordinance [fol. 87] speaks for itself as to who should be notified.

The Court: As to his client, I will let him ask it.

A. You asked me if I knew?

Q. I think the question was, based on your study of the ordinance, do you know that there is no provision in the ordinance requiring the giving of any notice to the distributor of motion picture films?

Mr. MacMaster: If Your Honor please, we would like to make the additional objection the ordinance does not provide for notice to the distributor of the film. There is no way for the board to know who distributes it. The exhibitor gets the notice. There is no way for the Movie Classification Board to know who made the film or who distributes it.

The Court: I will let him make his proof.

A. That ordinance does not have any provision as far as the distributor is concerned. I'd have to look at it again to know for sure, but I don't recall any provision like that.

Q. Now specifically with respect to "Viva Maria!" how many members or substitute members of the board screened or viewed that film?

A. Five members.

Q. And when did the board take its action with respect to that film? Did they take it the same day that the film was viewed or at a later date?

A. No, the official, the vote was taken at the next meeting, which was Wednesday, I believe it was the 9th of February, [fol. 88] following the screening.

Q. And as I understand the records of the board, there were members of the board who voted to classify the film as not suitable who had not seen the film?

A. I think so, yes, sir.

Q. Now, without telling me what was said, I will merely ask you, sir, was there a general discussion of "Viva Maria!" before a vote was taken?

A. Yes, sir.

Q. As to whether or not it should be classified?

A. Yes, sir.

Q. Did the various members of the board detail what they had seen in the film as you testified, for instance?

A. Yes, as I recall there was a fairly lengthy discussion on this movie.

Q. And those board members who had seen the film would describe it in general terms and then other members of the board who hadn't seen it would participate and the vote would be taken?

A. Yes, sir.

Q. Dates are hard to keep in mind and I am not trying to get specific dates, but I think the letter indicates that the board's action with respect to "Viva Maria!" was taken on the 9th. If I recall correctly, that was a Wednesday?

A. I believe that is correct, sir.

Q. With respect to that Wednesday, when was the picture screened?

A. The picture was screened on the Monday prior; that [fol. 89] would be February 7, prior to the Wednesday meeting.

Q. Now, if I understood you correctly,—and I do not wish to misstate what I understood you to say,—it is my recollection of your testimony that you said that in your opinion the movie had a tendency to influence children. Did you say that or something like that this morning?

A. That it would have an influence on children, something to that effect.

Q. What influence on children do you think "Viva Maria!" would have?

A. Well, it would have a number of influences, really.

Q. Which ones, sir, in your judgment?

A. Well, I will start with the one that—Well, in the first place, the scenes that you have mentioned and that Mr. Hartt has mentioned, for instance, I think a lot of them

were far fetched; I think there would be some comedy, in fact, involved in the movie; I think that would be fine. The influence which I spoke about and which I think the board as a whole generally decided on would be the fact that love, as discussed by the key characters and as portrayed, would be limited to the strict sense of lust or sexual engagement with virtually anything that wore pants, which was what Maria engaged in from time to time. Really, it was portrayed as being acceptable and very agreeable and there was no redeeming factor along those lines anywhere in the movie.

Q. Now, when you say "love as discussed by the leading [fol. 90] characters," now, it is a fact, is it not, that you are referring only to one very, very brief discussion between the two Marias after the night of the carnival?

A. I don't remember how long the discussion was, but that and the morning after the night before was a brief discussion, and I think from that point on there was no particular discussion along those lines, just a continuation of a pattern.

Mr. McElroy: Thank you, Mr. Gilliland. We have no more questions.

Redirect examination.

By Mr. Bickley:

Q. Were there any scenes in the movie that portrayed the women disrobing the men?

A. One scene involved that sort of thing. This is the one mentioned earlier where the hero of the revolution was chained up in the jail and Maria No. 2—there was a strong man in the movie—Maria No. 2 started rattling the bars because she wanted to get in to see her hero and the strong man parted the bars for her. She went in, embraced him, they spoke,—I don't remember what they said particularly,—but she tore his shirt off to the waist, and as far as disrobing goes, that is all she did to him. I think she tore her shirt off partially, or wholly off maybe.

Q. Was there any indication that she disrobed him any further or any hint of it or any such thing as that?

A. Well, there was some indication. The camera, of course, did not allow any particular view.

[fol. 91] Q. This was the part left to the imagination, if any, is that right?

A. I'd say so, yes, sir.

Q. Were there any scenes of seduction in the movie, as you recall?

A. Seduction. At this time I don't remember if there were any such scenes or not.

Q. Was the general—What was the general tenor of the movie so far as sex was concerned, in your opinion?

A. It was a strain that was carried throughout the movie, I think. Regardless of what happened, it was one of these things that was still there, still present.

Q. Well, what type of sex?

A. Well, as I said before, from start to finish it was a loose sort of conduct, we will say, promiscuous sort of thing.

Q. Was it portrayed in the sense of being acceptable?

A. Very much so.

Q. Portrayed in the sense of being desirable?

A. Very much so.

Mr. Hartt: If the Court please, we object to leading the witness.

The Court: Don't lead him, counsel.

Q. Yes, sir. Were all of the scenes concerning the clergy farcical scenes or what they refer to around here as spoof?

Mr. Hartt: He is again leading, if the Court please.

The Court: I think it is leading. Sustain the objection.

Q. Would you say—Describe the effect, if you can, of the [fol. 92] use of the clergy in this film on the viewers of the film.

A. The clergy was, in this sense, denoted as being an integral part of or being a part of the leadership of the

oppression or the violent activities, we will say, which took place, and when things got out of hand for the Napoleonic type general, the clergy then took over and carried on from that point forward.

Mr. Bickley: In order to bring it up to date, Your Honor, we'd like to offer in evidence Plaintiff's Exhibit No. 10. Would you mark this, please?

(Plaintiff's Exhibit 10 marked for identification.)

Mr. Hartt: With the same limitation, if the Court please, the photograph being marked I presume you identified, no objection.

Mr. Bickley: We offer in evidence Plaintiff's Exhibit No. 10, which is the advertisement of this film, "Viva Maria!"

Q. Is this the same one about which you have been talking, Mr. Gilliland?

A. Yes, sir, it appears to be.

Mr. Bickley: Which shows to be in the paper of the Dallas Morning News of Thursday, February 17, which is this morning's paper. It has no classification on it. No further questions.

Mr. Hartt: Nothing further here, Your Honor.

Mr. McElroy: We have nothing further, Your Honor.

[fol. 93] James Robert Maceo, after having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. MacMaster:

Q. Will you please state your name to the Court?

A. James Robert Maceo.

Q. You are a member of the clergy?

A. Yes, I am.

Q. What religion?
A. The Episcopal Church.
Q. Are you a pastor of the Episcopal Church in Dallas?
A. I am rector of Saint Paul's Episcopal Church.
Q. Where is that located?
A. 1302 West Keist Boulevard.

Mr. Carrington: If the Court please, may we have the same objection generally throughout the interrogation of this witness that we made as of the other witness?
The Court: Yes, sir.
Mr. Hartt: And also the defendant Interstate makes the same request.
The Court: Surely.
Mr. Hartt: Thank you.

Q. How large is your parish? Would you classify your parish by the number of families in the parish?
A. It is classified as a parish when it is financially self-supporting.
[fol. 94] Q. And how many families?
A. Families?
Q. Yes.
A. Approximately a hundred and sixty.
Q. Are you a member of the City of Dallas Motion Picture Classification Board?
A. Yes, I am.
Q. And you were appointed by the City Council of the City of Dallas?
A. Correct.
Q. In connection with your duties on the Motion Picture Classification Board, did you have occasion to view the screening of the movie, "Viva Maria!"?
A. Yes, I did.
Q. Were you present with other members of the Motion Picture Classification Board on that occasion to determine the type of classification which should be given to this movie?
A. Yes, I was.

Q. And how many members of the board viewed the movie of that with you?

A. There were four others, five in all.

Q. Will you tell the Court what you saw on that occasion with reference to what was being exhibited on the screen the day you viewed the movie?

A. Yes. The movie was entitled "Viva Maria!" with two leading female stars, an actress by the name of Moreau [fol. 95] and an actress by the name of Brigitte Bardot. The movie was set in a Central American locale. The leading actress portrayed by Brigitte Bardot was a revolutionary type person of Irish descent who worked with her father in harassing the English. In one of the opening scenes she is shown aiding her father blowing up a bridge. He is apprehended by the authorities and shot. She continues with her job to demolish the bridge, which she does. At this point she apparently is orphaned. She is a young woman at the time somewhere around twenty or early twenties. In her wanderings she comes upon a circus or carnival like troop which she joins and gains employ as a dancer, singer, with the other lead actress, who makes her entrance at this point in the movie, Miss Moreau. Through circumstance and a lack of knowledge with the way Miss Moreau has been acting in her act, she comes on stage and initially through accident part of her costume is ripped, torn off. Then it gains some audience reaction and she is encouraged by Miss Moreau to continue with it intentionally, as Miss Moreau begins to imitate her. They continue to take off their costumes until they are down to some undergarments of a nature which I don't know how to describe, except their bodies were still covered or at least most of their bodies were, although it did show quite a bit of the bust of Miss Bardot. This accidental act or the act which begins accidentally then is developed into a regular routine. The movie traces this carnival troop's wanderings over the countryside. In one particular scene [fol. 96] Miss Bardot, who has been occupied with her father's revolutionary tactics, apparently has had not much

time for relationships with men. Miss Moreau indicates that she has had relations with men and love, as the word is used, is very desirable and wonderful. In a particular scene they are having some sort of party or eating in an out of doors atmosphere when Miss Bardot is introduced to liquor and then she upon reflection of Miss Moreau's feelings and attitude toward love, she is followed by three men whom she accepts their invitation to join them in a sort of horse drawn carriage and you see her reflecting on Miss Moreau's words and advice. Then you see her climbing into this cab with these three men. The next scene shows a morning scene at the site of where the carnival has camped and Miss Moreau is a little bit apprehensive that Miss Bardot has not shown up. Almost immediately Miss Bardot comes on the scene with her clothes, outer clothes torn off the upper part of her body, and ripped. She gets out of what apparently is the same horse drawn carriage and she kisses each man, the same men she had joined the night before. She is bruised, her hair is disheveled, and as I said, her clothes were torn in different parts off the upper part of her body revealing undergarments. She kisses each of these men goodby and rejoins Miss Moreau, with whom she lives in a sort of circus troop kind of wagon. She comes into the wagon and she admits that love indeed is wonderful and relaxes in the chair, throws her legs up on a table in front of her and [fol. 97] gives the portrayal of a person who has made a wonderful discovery and looks very fulfilled. The circus troop eventually engages in a full scale or partial scale, rather, revolution in this Central American locale. They join this and throughout the course of the movie in the various situations in which the circus or carnival troop appeared, Miss Bardot is seen writing the names of people who apparently she has made love to, made love with, and apparently slept with, and she writes them on the side of the wagon, on the inside. By the time that they have engaged this revolution, she has quite a list going. In the course of the revolution the circus troop is captured and

they are put in a dungeon like, dungeon appearing jail. Once in there they are separated from a male actor who apparently is one of the leads in the movie; he represents the revolutionary leader. When he appears in the movie, however, he is already captured by the forces who are against the revolution. He is being led with his arms in a sort of stock like apparatus which renders his hands and arms useless although he can still walk. When they are put in this jail the revolutionary leader is separated from the carnival troop by some iron bars. Miss Moreau at this point shows and evidences what appears to be a great attraction to this revolutionary leader. She rattles the bars that separate her from him and the circus strong man accommodates her by separating the bars enough so that she can pass through and he then puts the bars back [fol. 98] in their original order. She comes up to the revolutionary leader and puts her arms around him, around his neck, then in course takes his shirt, rips it from his body. Then you see from the camera location from the back of Miss Moreau, see her hands go up to her shoulders and you see her clothes being parted and the sound of a ripping and she stands there and embraces him. She caresses his body by beginning up in the area of his neck and face and runs her hands down his body and then again stands up and embraces him. Eventually the circus troop is liberated from this jail and they pursue this revolution in the open fields and eventually they overcome their antagonists. In the last or one of the last scenes of the movie, again Miss Bardot is shown running to a man, or not running but at least with a man, and then by the next scene she is seen again indicating writing his name on the inside of the circus wagon, I believe, indicating again consistent with the pattern which began near the beginning of the movie that she evidently had also made love or otherwise slept with this man also. I think this represents a resume or some sort.

Q. Do you recall any members of the clergy being involved in any of this movie?

A. Yes, I do. Apparently the clergy were of at least general Catholic fellowship or denomination. They represented sort of the ecclesiastical authority, and at one point the ecclesiastical authority takes the reins of leader-
[fol. 99] ship from the military authority. The older man, who appears to be a monk of some order, along with a younger man gained access, they stopped the train which had the carnival troop with the lead actresses on it. They gain access to the train and ask for a confidential, private interview with these two actresses who have assumed by this time leadership of the revolution. Once having gained this privacy, they pull guns, take out guns and threaten them and disconnect certain cars from the train, leaving the engine and the car on which the lead actresses are riding with these monks to proceed on. The younger clergyman is shown with his hands around the neck of apparently one of the trainmen or revolutionaries. When they are brought to the headquarters they undergo some questioning, but when neither of the two actresses yields to the questioning, they take them down to a dungeon like scene where various apparatuses of torture are shown. An attempt is made to utilize these various apparatuses in an effort to make the women tell what they know about the revolutionary plans and particularly to sign confessions rejecting their role in this revolution and they refuse to do this. I think as a matter of fact this is the primary intent, to get them to sign confessions of their part in this so they may in turn demoralize the revolutionary followers. The monks, the two I mentioned originally along with others, are seen placing the women in these various apparatuses, one which shows some sort of clamp that a person's head is placed in, with the intent, of course, of
[fol. 100] screwing this clamp upon the person's head. These various apparatuses are never utilized to the point of pain or torture because the revolutionaries break through. They interrupt this scene and apparently therefore the heroines are spared this torture. The clergy are shown in this way in the movie.

Q. Subsequent to this filming of this movie for the purpose of bidding the board to arrive and determine a classification, did the board have a subsequent meeting and discuss the movie?

A. Yes, they did.

Q. The full board?

A. Yes.

Q. Did the board generally have a lengthy discussion on what proper type of classification which in the judgment of the board should be given this movie?

A. Yes, I think it was fairly lengthy. I don't believe it was as long as some but longer than the vast majority.

Q. And the board arrived at the determination that it should be classified as not suitable for young persons?

A. Yes, they did.

Q. Now, in your work as a pastor, do you have occasion to work with young people, both boys and girls, under the age of sixteen years?

A. Yes, I do.

Q. You have counseled with them as they come to you for counsel and guidance?

A. Yes, they do.

[fol. 101] Q. You have counseled with them as they come to you for counsel and guidance?

A. Yes, they do.

Q. And do they discuss their problems with you?

A. Yes, they do.

Mr. Hartt: If the Court please, he is again leading the witness. We object to it.

The Court: I will overrule it.

Q. And in your opinion would this type of movie viewed as a whole have any detrimental effect whatsoever on young people below the age of sixteen years?

Mr. Hartt: If the Court please, that is not the standard of the ordinance.

The Court: I will let him answer.

Mr. Hartt: "Detrimental" is not a test for the classification of pictures at all and we object to it.

The Court: I will overrule it.
Mr. Hartt: Note our exception.

A. Yes, I do believe it would be.
Q. Why?
A. In this sense, that it shows no explicit scenes of sexual intercourse as such but it does imply very clearly that such does occur. I think it does show this, and that the detrimental effect is to show that sexual expression between a man and a woman or any two people of the opposite sex is something that can be entered into without responsibility and continuing commitment, that it equates [fol. 102] sexual feeling and expression with the word "love," that—

Mr. Hartt: If the Court please, if he would slow down, I'd like to note it.
The Court: Sir?
Mr. Hartt: If he would slow down I'd appreciate it so we can make some notes on this.
The Court: Well, I can't control his modulation. Proceed, Reverend.

A. The scenes of the relationship between Miss Bardot and various men in the movie, as well as between Miss Moreau and at least one man in the movie, indicates that the attraction between the man and the woman is something which is to be fulfilled almost upon first meeting; that there is no evidence of true affection and continuing responsibility between the people. It implies that people can meet, see each other, and immediately, without too much other duration of time or of exchange of personal responsibility and commitment, can enjoy each other sexually, part, and therefore no harm. As a matter of fact, this is all a matter of one of the joys of life and is great, is magnificent, is wonderful, as such, and I think this type of relationship is not true and that it is misleading and shows it as acceptable and approved behavior.
Q. In your judgment, what this picture portrays is directly contrary to our accepted moral standards?
A. Yes, it is.

[fol. 103] Q. I believe the gist of your testimony then with reference to this then is it does portray sexual promiscuity in such a manner which is likely to encourage juvenile delinquency?

Mr. Hartt: We object to leading and putting words in the witness' mouth.

The Court: I will let him—

Mr. Hartt: He is fixing to read from the ordinance. He can tell his opinion about what it is without being read.

The Court: Overrule it.

Mr. MacMaster: He was objecting because we weren't following the ordinance a while ago.

Q. Encourage juvenile delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest?

A. Yes, I think this movie would lead to their sexual promiscuity, that it could.

Q. Then in your judgment this violates this standard set in the ordinance I have just read?

A. Yes, I do.

Mr. MacMaster: Okay.

Mr. Hartt: If the Court please, cross examination will be of some time. I would like to know the Court's pleasure on proceeding now. It is about twelve.

The Court: Well, we will recess until one-thirty.

(Court was in recess, after which time the following proceedings were had:)

[fol. 104] Cross examination.

By Mr. Hartt:

Q. Reverend Maceo, for the record we call you reverend. How do we address you properly?

A. That is fine.

Q. I believe you described this scene where the so-called striptease took place as concluding where both the young

ladies still had their bodies adequately covered, is that correct?

A. I used the expression, I believe, that most of their body was covered.

Q. Well, so we understand, you are not saying that so-called scene was indecent at all, are you?

A. I would say it was questionable.

Q. What?

A. Questionable.

Q. Questionable. The time of this picture would be approximately what? 1910? For reference purposes, they did have an automobile in it but otherwise it was a very old automobile, was it not?

A. I believe so.

Q. Shall we say somewhere around 1910, is that correct?

A. I am not sure.

Q. All right. Would it also be fair to conclude that in this "striptease," that these young ladies had on what we would call the number of undergarments that would be customary in those years? In other words, in a word, they took off more petticoats than you could count.

A. They took off quite a number of petticoats.

[fol. 105] Q. And they still had some on when they quit, didn't they?

A. I believe in the initial scene, the one which I spoke to regarding the first time Miss Bardot got on the stage and ran into some accidents which they proceeded to exploit and carry on,—

Q. In other words, her outer dress tore somewhat and they started tearing off the outer dress, but when they left the stage they still had on substantially more clothing than you would find in a bikini bathing suit or something like that?

A. Yes.

Q. There was some discussion regarding this scene in the jail where the strong man had pulled the bars apart, but the man, the revolutionary leader, whatever his name was, he was in there with his arms chained above his head

to a large block of wood that could be described as a yoke, is that not correct?

A. Yes.

Q. In other words, he never got his hands at all on the young lady, did he?

A. Not that I remember seeing.

Q. This block of wood would be as big as a railroad tie or perhaps even bigger, is that correct?

A. Not quite as big as a railroad tie, as I remember it.

Q. But substantially bigger than a four by four though?

A. Yes.

Q. And the only thing that was shown there, really, was [fol. 106] the girl taking off his shirt, loosened his shirt, and then I believe you said that she was, as the camera faced out, she was loosening her blouse or something, is that correct?

A. She had torn her clothes, all the clothes from her upper body.

Q. Well now, was she nude from the waist up or not? Did you actually say she was?

A. From the way the camera depicted it, you could see her clothes from the back split down what apparently was the middle seam in the back and it came almost off the edge of her shoulders, as I recall.

Q. Came off the edge of her shoulders. My question was, could you say that you actually saw her nude from the waist up?

A. I can only say what I just described.

Q. All right. Therefore, the front of the dress was still on as shown right there, wasn't it?

A. It was—The camera angle was from here back, so as to what the front actually was, the state of the actual front of her dress was, there is no way of telling.

Q. It would be judged by inference or imagination, is that not true?

A. Yes.

Q. Had you imagined it was torn off?

A. I had imagined, yes.

Q. Regarding this wagon in which these girls traveled, the names of some boys were written in there, I believe you testified, or men?

[fol. 107] A. Yes.

Q. And you did not see the Maria played by Brigitte Bardot have sexual intercourse with any man at all, did you?

A. No.

Q. As a matter of fact, you did not see them in any situation where they were undressing each other, did you?

A. I don't remember. I do not believe so.

Q. Now, the only thing that we have so far as this list of names on the wall,— Would there be as many, would you say, as five or six or seven?

A. Yes, I would say there was between six and nine.

Q. All right. Say nine. Of those nine names you never saw her have intercourse with any one of them, did you?

A. No.

Q. And it was only again in your imagination that they were so represented as having intercourse with her, is that correct?

A. That is correct.

Q. All right. Regarding your background, please, sir, in the matter of education, I presume that you finished high school, college and a seminary of some sort. Tell us what that educational background was.

A. Just that. Public high school at Fort Worth.

Q. Where? Fort Worth?

A. Fort Worth, Texas.

Q. Where did you go to college?

A. S.M.U., received a Bachelor of Arts; Bachelor of Theology from the Philadelphia Divinity School in Philadelphia, [fol. 108] Pennsylvania.

Q. When did you receive that degree?

A. 1956.

Q. And the Bachelor of Arts at S.M.U., what was the major you had there, please, sir?

A. History.

Q. And so far as courses in psychology or psychiatry, have you had any?

A. Yes, I have. I had six hours at S.M.U. and three hours in seminary.

Q. Six hours at S.M.U. Is that in fact a sophomore beginning course in psychology, is that not correct?

A. No, it was a course in abnormal psychology.

Q. And the course, three hours at seminary, was what?

A. It was a course in Freudian psychology.

Q. I see. Then you would be able perhaps to read into these symbols which you found in this picture more things than the average person, wouldn't you, by virtue of this Freudian course in psychology?

A. I think I would be able to give names to them. I think the impressions would be the same.

Q. They do at least identify these various emotions and do give names to them, is that not correct, in that course?

A. They give names to them, yes, sir.

Q. I believe some of my notes here say something to this effect. I believe you said regarding the relationship of love [fol. 109] as depicted in this picture that you found that it was not true, is that not correct, words to that effect?

A. I recall saying that as the dialogue took place, that they referred to love, but that the only evidence in the character portrayal did not fulfill anything but a very transitory meeting, and as such I was left—

Q. Yes. In a word, if we imagine there is a sex relationship, actual intercourse, between this boy or any one of the men and any one of these girls, we can conclude that it took place without their being married, is that not true?

A. Yes, I think so.

Q. And that, of course, would be described by you as a clergyman as what? Adultery?

A. No, fornication.

Q. Fornication. Is there a difference?

A. Yes. Adultery involves one of the parties being married.

Q. And fornication would be what?

A. Sexual intercourse between unmarried people.

Q. So far as we know, no one of the parties here was married, is that correct? Neither of the girls was married, they appeared to be single women?

A. I don't remember any reference to their marital state at all, as far as being married.

Q. As far as the names on the wall, there was no reference to them being married either, was there?

A. No, not that I recall.

[fol. 110] Q. Then we can truthfully say the picture did not depict adultery, can't we?

A. Not that I remember.

Q. And do we correctly infer then that in passing this judgment whether there is a proper or true relationship, you would obviously admit that you carried into this judgment which you made your training both as a young man raised in a Christian home and also your training as a minister, is that not true?

A. In making the judgment, no.

Q. You mean you could divorce yourself from the training which you have and the position which you now have in your church?

A. I think by any other name, the relationship that I inferred that took place on the screen would have been the same.

Q. No, I am not saying that: My question is this, when you said that these relationships are improper, you obviously bring to bear your personal experience in religion as an individual and also the particular experience which you have by virtue of being an ordained minister or preacher in the church, is that not true?

A. The impropriety of it?

Q. Yes, sir.

A. That judgment?

Q. In other words, that judgment is heightened by virtue of the fact you have this position as an ordained minister?

A. Heightened, I would suppose.

[fol. 111] Q. All right.

A. I am not quite sure.

Q. What I am trying to say, there are people who might not be so sensitive to what was shown in that picture by virtue of the fact that they had not had so close an association with a Christian church and particularly that they were not ordained as a minister in the Episcopal Church, is that not true?

A. Yes, I think there would be some people like th[illegible].

Q. All right. Now, this picture also had some scenes in there which all the way through were, we might call them merely absurdly ludicrous, is that not true?

A. Ludicrous I'd go along with.

Q. Absurd too, ridiculous?

A. Maybe.

Q. I am thinking, for example, do you recall a scene where this little dove was flying around and someone shot the dove with what appeared to be a big pistol and the man went over and picked up the little bird, pulled the bullet out and gave it back to the man who shot it and the bird flew away?

A. I remember the scene.

Q. We don't construe that as a miracle but a feat of showmanship, is that not true?

A. The character who did this was a magician and it was within the context of his act, right.

Q. Yes. At the same time that same dove on occasion was flying around and when—I guess we'd call them the baddies [fol. 112] —were running a machine gun or something, the little dove carried a hand grenade over and dropped it on the machine gun next, didn't it?

A. Yes.

Q. He did that twice, didn't he?

A. Yes.

Q. Would that be fairly described as sort of ridiculous or contrary to human experience?

A. Yes, I would describe it as contrary to human experience.

Q. We also found a scene where the revolution was going pretty good and someone was barricaded in front of the bank; a grenade was thrown or some explosive and when it blew up, it blew up the sandbags, is that correct? Do you remember that? And the sandbags were not sandbags at all; they were money bags and gold just rained all over the town square, is that correct?

A. I remember the raining of the money, the gold coins, all over the square, right.

Q. Again not comporting with human experience, is it?

A. Not mine.

Q. And as a matter of fact all through this thing was quite a bit of that kind of conduct, is that not true?

A. I would have to really enumerate—

Q. Well, do we need to call some more off? Then let's call some more. All the items of the torture chamber really were again in such bad repair that they didn't work, isn't that true?

[fol. 113] A. Yes.

Q. I mean, the tongs came apart and the pin fell out, and the screw that was going to crush the skull, the vise fell apart and the vise screw came loose and the whole thing collapsed, is that not true?

A. Yes, I believe I remember that.

Q. Now, this torture situation there, that wasn't a real torture scene at all, was it?

A. No one was tortured in actuality.

Q. As a matter of fact, you would say it was not a real torture scene, wouldn't you?

A. Yes, I would.

Q. Now, the clergy in this particular picture, did you understand them to be Catholic?

A. I inferred that they were Roman Catholic priests.

Q. No one said they were?

A. No.

Q. Being in Mexico at the time in question, you probably would make that inference, is that correct?

A. I believe I did.

Q. In other words, you did. Now, the one who was the monk who was head of the monastery group or something, he had rather a phenomenal experience happen to him too.

A. Yes, he did.

Q. Tell the Court what that was.

A. I have forgotten the exact context but in some way an [fol. 114] explosive was dropped in his cowl draped over the back of his neck. He walked off camera; you hear an explosion; the next scene he is walking down the steps with his head in his hands.

Q. But that is not a new idea either, is it?

A. The head in the hands?

Q. Well, don't you recall an old story from childhood, the headless horseman and Ichabod Crane, carrying the head in the hand, a childhood story?

A. I believe I remember that.

Q. So the idea was not new?

A. No.

Q. And again that was something that was a spoof in itself, wasn't it?

A. Yes, it was.

Q. Well, that was about the last part of the picture. The birds were along toward the latter part, and the torture chamber. Let's pick up at the beginning of the picture. The little girl running around at the very beginning of the picture, that was something of a spoof too, wasn't it? Remember that?

A. Yes.

Q. There was a little tad, we will say, about six or seven years old, wasn't she?

A. I'd say somewhere between seven and nine.

Q. Seven to nine. I yield. And she was out there apparently chasing a ball of knitting string when you first saw her, wasn't that true?

[fol. 115] A. Yes, I remember that scene.

Q. Out in the woods, and she ran clear across the panorama of the screen there and suddenly she came behind the hedge and there was a man who appeared there about to catch her for a moment, didn't he?

A. There was a man there, yes.

Q. And when she got behind the hedge, instead of being a knitting string, this was some sort of high velocity fuse and he lit a match to it and it blew up the building, didn't it?

A. Yes.

Q. That doesn't comport with human experience either, does it?

A. In what way?

Q. To have little girls nine years old chasing around with fuses they have personally set, apparently, and blow up a building. That is somewhat unusual, isn't it?

A. In my experience, it is, yes. In my experience it is.

Q. And we could infer generally unusual too, isn't it?

A. This is something I know little about.

Q. Yes, sir. Well, that was an unusual thing at the beginning, the end and the middle. Isn't it fair to say this whole picture was pretty well filled with things that did not comport with human experience?

A. There were many such things.

Q. In a word, most of them were designed to be funny, weren't they, to the audience?

A. I think there were many things in there of a rather [fol. 116] tragic nature which were portrayed to elicit laughter.

Q. Well, much comedy, of course, has tragedy closely involved with it?

A. Yes.

Q. Isn't it true to say that this picture generally was a comedy?

A. Generally, yes.

Mr. Hartt: All right. Thank you, Your Honor.

Cross examination.

By Mr. McElroy:

Q. Reverend Maceo, as I understand your testimony, you are saying that, having screened the picture, in your judgment it was such as to create the impression on young persons that promiscuity—I can't ever pronounce the word but you know what I mean—is acceptable, is that correct?

A. Yes, I think it had this influence.

Q. Now, what age young person do you feel would be subject to this impression?

A. I think the youngsters who are about the age of sixteen, fifteen, fourteen, in that area, would have experienced the onslaught of puberty and adolescence and having these energies and drives develop in them, their being aware of them, their being subject to various stimuli to them, would be subject to some of the scenes in this movie.

Q. How about a nine year old?

A. The nine year olds of my experience probably would not know, be able to infer what a person aware of his own personal sexuality and appetite would be aware of.

[fol. 117] Q. So it is safe to say from that, that from nine down this feature, as you see it, is not going to create this impression on a nine and younger person?

A. I think it is relatively safe to say that, yes.

Q. Now, you mentioned, as I understood you, the fifteen and sixteen year old. How about the eighteen year old? In your opinion is this picture likely to create the impression on an eighteen year old that sexual promiscuity is acceptable?

Mr. MacMaster: If Your Honor please, the ordinance limits it to sixteen and I think the question is irrelevant as far as this ordinance is concerned.

The Court: I will let him answer.

A. I think it might, yes, sir.

Q. Would you draw an age limit at which in your opinion the picture, "Viva Maria!" would not have that danger?

A. The picture itself, I think the picture itself would give this impression to any person of any age.

Q. Even the nine year old?

A. Within the terms of my previous qualifications, a person aware of sexuality in a personal way.

Q. I judge then from that that after viewing "Viva Maria!" you felt that it had created the impression on you that sexual promiscuity was acceptable?

A. I got this impression from the movie, that the movie was suggesting this.

Q. Now, we have talked a little of these bombing scenes [fol. 118] like the little girl and the twine, and the next scene the little girl is delivering apples which explode. Remember, it blows up a building?

A. Is this the one at the police station?

Q. Yes.

A. Yes, I remember this. She takes some basket in there.

Q. And the building explodes?

A. The next thing you see is the building exploding.

Q. And we blow up some bridges before her father is finally shot? Do you think this is going to create the impression on a fifteen or sixteen year old that blowing up bridges is acceptable or desirable?

A. In our community, I don't think so.

Q. And what do you mean "our community"?

A. The City of Dallas.

Q. And when you and the other board members were discussing "Viva Maria!" and speaking in terms of the contemporary standards of the community, you and the board members were speaking of the Dallas community, were you not?

A. I was, and as far as our discussion goes, it was in terms of the teenagers or young people we know.

Q. And if I were to ask you what the community was that you were considering in the context of the ordinance, you would say you were considering the Dallas community?

A. That is my experience.

Q. And that is the only community you were considering?
[fol. 119] A. Yes.

Q. Now, the clergy in this particular picture came out, as the expression goes, they were the ones in the black hats, is that not right?

A. Yes.

Q. They were the baddies?

A. Yes.

Q. Now, someone viewing that picture, do you think it would create the impression on a ten or twelve year old boy or girl that the clergy was bad and evil?

A. Perhaps. I felt it was a mockery. They were bad but they were something to be laughed at.

Q. The clergy were something to be laughed at?

A. There was this mixture in there in which it was hard to determine.

Q. And that was equally true of the bombings, it was a mockery?

A. I didn't get that feeling because there was no sympathy created. I felt no sympathy before going to the movie for oppressors of the poor; I feel no empathy for this characterization. On the other hand, the presumed empathy for the clergy was there, and so I think of the two things, mockery doesn't come to my mind as a word with reference to the other situation.

Q. Now, as I understand, there was some discussion or some feeling amongst the board in their deliberations of "Viva Maria!" that it was sacrilegious. Do you recall any such discussion?

[fol. 120] A. I recall hearing that word, yes.

Q. And the sacrilegious aspect of it entered into it as far as the board's discussions were concerned?

A. I don't remember.

Q. Do you consider in your opinion the picture to have been sacrilegious?

A. I think my witness would have to be in terms of what I have already made because it is so broad an understanding of what sacrilege is as such. The word mockery is the

one I used and one which I feel represents my impression of it. Sacrilegious, I am hard pressed to say.

Q. From your experience in the ministry, are you of the opinion that the subject of premarital sex should never be shown to persons under the age of sixteen years?

A. Never be shown?

Q. Yes.

A. I think it depends on the light in which it is shown.

Q. In which light might it be shown which in your opinion would not create an impression on a twelve or ten year old or thirteen year old that it would be acceptable? The question is poorly phrased. What I really mean to ask is this, in what fashion might the subject be shown to a child of twelve years old that in your opinion would not be objectionable?

Mr. Bickley: If it please the Court, we object to this—

The Court: I believe it is hypothetical, Counselor. Sustain it. We are discussing the ordinance here.

[fol. 121] Q. Are you familiar with the fact that— Excuse me. Your Honor, rather than going into it with this witness, I would like merely to request the stipulation of the City to the fact that there are any number of theatres, both conventional and drive-in, within the immediate area of the City of Dallas which are not subject to the restrictions of this ordinance.

Mr. Bickley: If it please the Court, we will stipulate without admitting that it has any relevance that those outside the city limits of the City of Dallas are not covered by this ordinance of the City of Dallas itself.

Mr. McElroy: And one further thing, if you will, Mr. Bickley, that those theatres are all around the City of Dallas.

Mr. Bickley: Yes, I think the Court may take knowledge of the fact that they are in the very close vicinity and probably on all sides.

Mr. McElroy: We have no further questions of this witness.

Redirect examination.

By Mr. MacMaster:

Q. Reverend Maceo, just one more question. Is it your opinion that the harmful effects of this movie, "Viva Maria!" viewed as a whole, outweigh its artistic or educational values that it may have on young people under the age of sixteen?

A. That is my opinion.

Mr. MacMaster: That is all.

The Court: Stand aside.

[fol. 122] FRANK MARTIN, after having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Bickley:

Q. Will you state your name, please, sir?

A. Frank Martin.

Q. And by whom are you employed, Mr. Martin?

A. City of Dallas Police Department.

Q. What is your classification?

A. Captain in charge of juvenile bureau.

Q. With the police department?

A. Right.

Q. How long have you been so employed?

A. With the bureau about twelve years.

Q. And previous to that?

A. I have been in the police department thirty-two.

Q. All right. What is your major duty in your present capacity?

A. Well, it is handling all juvenile offenders that are picked up by the, well, the entire police department. We handle them all.

Q. All right. In the handling of these juvenile offenders, do you have some, do you have any dealings with those who are involved in sex deviations or things dealing with fornication or any such thing as this?

A. Yes, sir.

Q. Do these create a problem insofar as the City is concerned?

[fol. 123] A. I would think so, yes.

Q. All right. Would you elucidate, please, sir, in what manner do they create a problem?

A. Well, of course, the only way— Just the numbers we handle. We handle—I can't give you the exact number; I can give you about what we have handled in the past year or so,—about three hundred fifty just for sex offenses or morals, and sixteen for rape, and a number of others for—

Mr. Hartt: Excuse me, I didn't hear; I could not hear.

Mr. Bickley: He says sixteen for rape and a number of others.

Q. Now, Captain Martin, in handling those, does it take personnel to do it?

A. Yes, sir, it does.

Q. Is there expense involved in doing it?

A. Well, I would think it is quite a bit of expense, yes, all the way through it.

Q. Then after your department handles them, are they sometimes handed over to other departments to continue working with them in some respect?

A. Yes, we refer them to the county juvenile probation officer, which is an arm of the Court.

Q. And then after you do that, then do you have anything further to do with them?

A. Not unless we have to go to court and testify.

Q. Are some of these young people who are involved in [fol. 124] these morals charges or involved in moral situations like that, are they also truants from school at times?

A. A lot of them are, yes.

Q. Do you have any contact with the school authorities in connection with them?

A. Well, not directly, no. In other words, if we pick one up for truancy, we pass this information on to the school administration, or if we pick one up for a sex offense while they are truant, we pass that on.

Q. In your experience do you find that there is ever any future necessity of handling these same types of individuals? In other words, do they have any recurrent offenses?

A. Yes, a lot of them do.

Q. Do any of them ever get involved in other types of situations involving misdemeanors or felonies or that sort of thing?

A. Yes, a lot of them, it is just one arrest after another. It is just a constant repeater.

Q. Captain Martin, is the problem concerning morals charges with juveniles decreasing or increasing in the City of Dallas?

A. I'd say it is just about stable. It is not much increase, not much decrease.

Q. It has been with us all the time?

A. It stays with us, yes, sir.

Q. You are not testifying as to what causes this, are you?

A. No. I don't know.

Q. But you are testifying that there is a problem here?

[fol. 125] A. Yes, sir.

Mr. Bickley: No further questions.

Mr. Hartt: No questions.

Mr. McElroy: We have no questions, Your Honor.

The Court: Thank you, Captain. You are excused.

(Plaintiff's Exhibits 11, 12 and 13 marked for identification.)

Mr. Hartt: If the Court please, to Exhibit No. 11, this copy, we have no objections. Exhibit No. 12, I presume, is a true copy?

Mr. Bickley: Yes, we got it from the clerk this morning.

Mr. Hartt: All right. No objection to No. 12 being a true copy, but as to what is said in here, we violently object and we say that we believe the phrase is "This does not comport with experience." Specially, there is a finding in this judgment that you can go from the beginning in the trial court and district court of the State of Texas, through all the procedures and get a final judgment in the Supreme Court of Texas in thirty-five days, and that is something that we are not agreeing to the truth of. This is a true copy, but as to the truth of the findings, in that sense we do not agree to them. If he wants to prove that up again, we'd be glad to see it established. The other item you have here is what? Notice of Appeal, Exhibit 13. No objection to Exhibit 13.

(Plaintiff's Exhibits 14 and 15 marked for identification.)

[fol. 126] Mr. Bickley: Your Honor, these items we are referring to, Plaintiff's Exhibits 11 through 15, are the judgment, Findings of Fact and Conclusion of Law, Notice of Appeal, the transmittal from the United States Court of Appeals, and the order of the United States Court of Appeals in the case now pending in the federal court concerning the constitutionality of this statute, this ordinance.

The Court: What is the relevancy of it, Counselor?

Mr. Bickley: The relevancy is simply this, Your Honor: the intervenors have come in here and say they have never heard about this thing before. They had opportunity to but they said they haven't, and we think it becomes entirely relevant in this Court.

The Court: On notice?

Mr. Bickley: Not only on notice but also on the finding that has been made by the federal court and the fact it is now pending before the federal court and they have held it to be constitutional.

The Court: I mean what they held, small as this may be here in comparison, that wouldn't be binding here, would it, unless it is finally adjudicated? I mean, a case on appeal,

nobody has got any chains on it. They can knock hell out of you in state court and abrogate it.

Mr. Bickley: This may be so, Your Honor.

The Court: I mean, until they finally act, I mean, you have chosen this. I will let you introduce it for whatever [fol. 127] purpose you can.

Mr. Bickley: I think it ought to be in the record so the upper court, if necessary, will have it.

The Court: I am uncertain as to what you mean to say about the binding phase of it.

Mr. McElroy: Your Honor, the intervenor objects to the introduction of Plaintiff's Exhibits 11 through 15, inclusive, on the grounds there are no pleadings to support the introduction of such evidence, and for the further reason that they are wholly immaterial to any issue in this case, the findings of a lower, inferior, federal court not being binding on this court, and for the further reason, of course, the case is on appeal.

The Court: I don't know whether they are inferior to me. I overrule it.

Mr. Bickley: Your Honor, subject to the Court's viewing the movie as such, we will rest at this time.

The Court: What says the defendants?

Mr. Hartt: If the Court please, if they haven't rested, of course, they haven't. Until they rest their case, we have nothing to offer. We do have a motion, however, that would be in order now, and that would be to strike the testimony of Reverend Maceo because he admitted here in detail that he used a contemporary community standard of the City of Dallas.

(Argument made by Mr. Hartt in support of his motion.)

[fol. 128]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Well, what do you gentlemen do now? Has the plaintiff rested?

Mr. Bickley: Plaintiff has rested subject to the Court viewing the movie, Your Honor.

Mr. McElroy: Your Honor, the intervenor has an exhibit which it would like to offer in evidence at this time.

The Court: All right, sir.

(Intervenor's Exhibit 1 marked for identification.)

Mr. McElroy: Your Honor, we offer in evidence Intervenor's Exhibit 1 which is the written contract between intervenor, United Artists Corporation, and the defendant, Interstate Circuit, with respect to the exhibition of "Viva Maria!" at the Esquire Theatre. The contract on its face shows that United Artists is to participate in the gross receipts of the exhibition of "Viva Maria!" at the Esquire Theatre on a sliding scale, ranging from twenty-five per cent of the gross receipts of the exhibition up to sixty per cent of the gross receipts of the exhibition, depending on the results of the performance.

The Court: What is this for? To show your interest?

Mr. McElroy: To show our interest merely, Your Honor.

The Court: Proceed.

Mr. McElroy: The intervenor has no further testimony at this point.

The Court: How do you propose to get the picture here?

Mr. Bickley: If it please the Court, I don't know what [fol. 129] the Court's desire in this respect is.

The Court: I don't have any particularly.

Mr. Bickley: Beg pardon?

The Court: I don't know that I have any desire particularly.

Mr. Bickley: I would submit to the Court that since there is no jury involved, that this picture can be viewed by the Court without any inconvenience to any parties if the Court would desire to do it in that manner.

The Court: Well, you have got to get it in the record some way so another court can look at it, if necessary.

Mr. Bickley: Yes, Your Honor. They said, as I understand it, they will have the print available when another court desires to see it, but they don't want to carry it with the record all the time.

The Court: I can appreciate that.

Mr. Bickley: It would be impossible for us to carry it with the record all the time. I assume the producer of this film has copies of it and when the upper courts want to look at it, they can bring it in for the upper courts to see, is that correct?

Mr. McElroy: That would surely be my understanding.

The Court: Shouldn't you, if you want to get it, get out a subpoena?

Mr. Bickley: Yes, sir. As I told the Court this morning, if the Court desired to have it over here at the courthouse, [fol. 130] we would get out subpoenas for the machines, for the movie and for the projectionist.

The Court: How are you going to show it?

Mr. Bickley: To present themselves here at the courthouse and show it at that time.

The Court: How are you going to get them here?

Mr. Bickley: By subpoena.

The Court: Have it here early in the morning, at nine, not later.

Mr. Bickley: Nine o'clock in the morning. Yes, sir.

Mr. Hartt: If the Court please, could the Court instruct the subpoena for nine o'clock Monday morning?

The Court: No, it has to be in the morning. I am going to rule and dispose of this before Monday morning.

Mr. Hartt: We have some question regarding the subpoena when we see it. I can anticipate we will have an objection to the confiscation of the machine. It is nearly this high and weighs nearly a thousand pounds, and we want to be heard on that at some time. I'd like to see the subpoena and the motion, if I could do that.

Mr. Bickley: We will get out the subpoena in a few minutes, Your Honor. This is the reason that we suggest to the Court that it would be easier for counsel and the Court to view it at the regular viewing places, and there are several of them available in town, many of them, where the machines are set up and where the picture is available [fol. 131] and this sort of thing. These are harder than the ordinary sixteen millimeter films to show. They require a lot more personnel; they require a lot more skill and a lot more equipment.

Mr. Hartt: If the Court please, we are not in a position to agree to that at all, but when the subpoena is served—We have a short brief on that.

The Court: Let's see that brief. I am sort of inclined to agree with what you said this morning. I doubt if, in the absence of an agreement, I don't imagine a judge could go forth and view a picture. I remember a case once where down in Athens the judge went out in his boots and got in a row boat and looked over an overflow, but it was done by agreement. I don't think the case was ever appealed. If it was, it wasn't on that point. So if you want to get it here, you have got to get out a subpoena, haven't you?

Mr. Bickley: Yes, sir, I assume we will have to get out a subpoena, Your Honor, and we will get it out against both parties to make sure we have it.

The Court: How are you going to get it here?

Mr. Bickley: That will be up to them, to get it here, Your Honor. We will get out the subpoena. We assume, since the evidence is in their control, it must be here in the courthouse, it will be their problem to get it into the courthouse.

The Court: Well, get your subpoena out. We will take a fifteen minute recess.

[fol. 132] (Court was in recess, after which time the following proceedings were had:)

Mr. Hartt: If the Court please, during the recess we have been handed a subpoena duces tecum addressed to Mr.

Raymond Willie, Vice-President and General Manager of Interstate. The subpoena in effect asks the following: To bring a current copy of the motion picture entitled "Viva Maria!" As we told the Court this morning, we will produce that tomorrow morning without subpoena; there is no objection to it. It also says, "together with equipment necessary to project the same." Now, at this point we are changing to the argument in controversy. This is very heavy and expensive equipment, difficult to move and which if the City wants to move, they should pay a proper rental for it the same as someone else. Otherwise, to take over that kind of equipment borders on confiscation and violation of our Constitutional rights, and to take over a man's plant for one day, take over a projection machine or something else, it violates the rights there of anybody, and we cannot bring that machine here and we object to it. They can get a machine if they want to, but in trying cases of this type, if they want to get either a heavy machine or a portable, there are places we can refer them to where they can be obtained. But both the expense of conveying them to and from the courtroom and the responsibility of getting them set up and established should be the City's and not upon a party who is a defendant. They also say, "bring [fol. 133] an experienced operator for the machine." We have operators, but again, if they want to hire a technician,— This borders very much upon the situation that exists when a doctor is examined, has examined someone and the other side decides to subpoena him as their witness and not pay him. They may keep an operator here for an hour or a day under their subpoena, that is their privilege. If they want to subpoena the man and make him perform professional services, we will be glad to refer them to the union where these men can be hired. We want to cooperate with them but we do not want to undertake the burden of hiring a man to make out a case for them or to hire their expert witnesses, so we object to the last parts of this subpoena. We will voluntarily bring the picture with the subpoena, either with it or without it. At nine o'clock

tomorrow morning we will have the film here and we will be glad to meet with the attorneys and refer them to people who sell these machines or rent them, and also to assist them in locating the union where an operator can be hired. We will be glad to cooperate with them.

Mr. Bickley: I take issue with counsel that he wants to cooperate or he wants to do anything else to help see this film. He has shown by his attitude he does not. He has viewing rooms available; he has machines available, places available where the Court could view it and all he has to do is to agree for the Court to view it in one of those places and this would not be necessary, and since he thinks [fol. 134] it is so inconvenient to him yet he refuses to make it convenient, then we think this is his duty to produce the film, and integral with the film is the equipment to show it because it is of a very technical nature. It is his film; he needs to keep it in his possession that it not be lost and that nothing happen to it, and he needs his own operators to actually show it in order that there is no responsibility on this Court for the losing of that film, there is no responsibility on us for the losing of the film once it is produced into this Court, or for the burning up of the film or for the breaking of the film. It is a matter that he needs to keep within his possession and we say for that reason, because of the very technical nature of it and because by his own brief he shows there is no case in Texas which deals with a judge by himself going out to view the film. He talks about a jury view and a jury certainly we agree with him. In his own brief he says where it is impossible or where it is impracticable to actually bring it into the courtroom, then he thinks that the Court ought to be able to view it at another place, and this being so, we think it applies in this case as soundly as it could in any other.

The Court: How are you going to get it in the record when it is not here, counselor?

Mr. Bickley: Judge, we think this, even if the film is here, the only way it can be put into the record is for that film to be marked and for counsel to agree that either

[fol. 135] this film or a print substantially like it will be available and this will be a burden upon not only the exhibitor but also upon the producer of the film, since they have intervened and they have become parties in this suit, and that same film can be marked there as well as it can be marked here for that purpose, and if counsel would agree to have such available, we would not make any objection to it as not being an exact print at the time it was actually shown. We have always been willing to agree with counsel on these things.

The Court: You agree it is not what, now?

Mr. Bickley: We would not raise any question about it not being an exact duplicate or print if shown at a later time from a different print of the same film. Now, this same film—

The Court: I don't quite understand you. I thought certainly the same film, wherever shown, would be shown, wouldn't it? You are relying upon a picture film.

Mr. Bickley: However, Your Honor, there are many other films that are exact duplicates of this.

The Court: I see what you mean, yes, sir.

Mr. Bickley: We would not require or insist that that exact print be shown.

The Court: You mean the same reproduction but not the same print.

Mr. Bickley: That is exactly right, Your Honor, because otherwise it would tie up their film until this thing [fol. 136] was finally heard by the Supreme Court of the United States, and when we know not.

The Court: Are you taking the position you can make him lug it up here and furnish all of the experts and do whatever is necessary to show it at his expense, his cost?

Mr. Bickley: Yes, sir, we think we can. We think that the film is no good without the equipment that goes with it and we think that this is his burden because he holds it within his hand to keep from going to that expense, if he wants to. Now, if there is a charge connected with showing it at his place where his facilities are available and

this is a proper charge to us and the Court wants to put it as a charge to this case, we certainly do not object to it. We don't object to actually paying it, if necessary, but we think that this is a thing that is a matter of convenience to the Court; we think the Court can require it; we think that counsel can do it; we know that counsel can if they so desire.

The Court: Are you claiming the judge of a court can go out and look at it away from the courthouse?

Mr. Bickley: We think you can, yes, sir.

The Court: There is a case in 181 2d where he couldn't go out and look at a fence.

Mr. Bickley: Your Honor, I don't know of any case—

The Court: And there is another case about going out and interviewing a child.

Mr. Bickley: Where the Court itself, where it is being [fol. 137] tried before the Court, and this may be such a case, I don't know, I am not familiar with that particular case, we have not briefed this particular point, and that being the case, if the Court is of the opinion it can't do it at all, then we will insist on our subpoena being good.

Mr. Hartt: If the Court please, the problem here is focused in this case, but it underlies what amounts to a major policy decision by the City of Dallas, and that is the taking of property without due process of law. Now, the Constitution prohibits that. If the City of Dallas sees fit to go into the business of exhibiting and screening motion pictures for their own groups, they have the problem of getting the equipment mechanically to project it and someone skilled enough to operate the machine. We pointed this out informally in the past, but in this case here and the others, we come to the question of a pattern. There will be a truck expense and labor to bring them here and take them back, and the use of a machine for a day is something which will tie up equipment. Now, that is condemning property or taking property for the use of the City, because the City has the burden of making this case and not the exhibitor. The Friedman case squarely

places the burden or sustaining the judgment on the City, the sustaining of the judgment of this classification board, the ordinance does. It is the City's burden and not ours. Being the City's burden, we have the problem— In the Interstate case, Interstate is a big exhibitor. There [fol. 138] are small exhibitors also who will be confronted with the same problem. As a matter of policy when it starts to taking property without due process, it places on these people to bring down here so the City can sue them, to bring a machine; that is something new in the law to me. I may represent a poor workman or, to us, a great corporation, but to make him produce a large milling machine or factory to make it an exbhiit is something unknown to me. I believe it is unknown to the law. Now, if I want a model, if I want a mock-up, if I want an exhibit, if I need special people to present my case, that is my burden. But the burden of exhibiting this film and showing it to the Court being the City's, the City does not have the right to use subpoena process to then require us to tie up our machines and equipment for the benefit of the City of Dallas without just compensation. Now, tomorrow—this Court is already aware of its docket,—there is another case coming here of this type.

The Court: Tomorrow?

Mr. Hartt: Yes, sir.

The Court: Not this court there is not.

Mr. Hartt: Well, I understood so formerly. In other words, the City of Dallas vs. Rowley United is a motion picture case and the pattern set here is going to be most important. Now, if each of the cases that the City of Dallas sees fit to file as a plaintiff winds itself into a courtroom with the defendant having the obligation of [fol. 139] assisting the plaintiff in proving the plaintiff's case, they speak of cooperation, all we need to do is roll over and play dead and say, "We agree with you." But when you come to an adversary proceeding in the courtroom, we are friendly with the City but we do not like to have property taken.

The Court: How big is the film?

Mr. Hartt: Approximately, I'd say, twenty inches square and probably that thick. They can be brought here easily. The film has a value but the film we are not worrying about, as long as we get it back. Everybody agrees on the film. But the question is, do we have to hire a man—

The Court: Can you take the film out and look at it?

Mr. Hartt: Sure, we can bring it in and let you look at it in the morning.

The Court: Can you unravel it without hurt?

Mr. McElroy: Your Honor, it has to be projected. If the Court means can you hold it up to the light, the answer is no, Your Honor.

The Court: I'd seen old films where you sort of rolled it along.

Mr. McElroy: Not this type of film, Your Honor.

Mr. Bickley: It cannot be done that way, Your Honor. And if we have it do this in this manner and if we have to go to this trouble to subpoena that film in here, then we shall always insist that not any copy of this film but this film itself always be available for any showing that must be made.

[fol. 140] Mr. McElroy: Now, Your Honor, as the Court appreciates, the intervenor has not been making this particular objection. For purposes of the record, because it is going to be very important at some other stage on the Constitutional ground, United Artists would like it known that it feels it to be imperative that the Court screen the picture, I mean view it in its totality; if that can be done here, we have no objection to that. If it can be done anywhere else, we have no objection to it. We do feel that this Court and no other Court subsequently can ever rule on the Constitutional questions unless the picture is viewed. Now, it is unreasonable to say that we are going to bring one of, well, maybe we have twenty-five prints of this picture, and leave it in a courthouse for the next eighteen months at the pleasure of the City of Dallas. We are perfectly agreeable that our film be viewed by the Court and we want the Court to do it.

The Court: Are there available outfits to set it up besides your particular apparatus?

Mr. Hartt: Yes, sir, there are many, Your Honor. The City can get them if they want it. They are trying to dodge the burden of buying a machine and hiring an operator.

The Court: What is the cost of it?

Mr. Hartt: Frankly I never have bought one. I don't thing you could buy one for a thousand dollars; probably it would cost you more than that; I'd say several thousand, perhaps.

[fol. 141] The Court: What does it cost to rent one?

Mr. Hartt: I never rented one in my life. I will find out and tell the Court and the City both.

The Court: Are there those kind of things here in Dallas, set up and ready to go?

Mr. Hartt: They can be rented by the City, I think.

The Court: What do you place as rent on your machine?

Mr. Hartt: I haven't got a rent on the thing at the moment, I am sure, without checking.

Mr. Tobolowsky: The exhibitor does not have a portable projecting machine, Your Honor, that we could bring with the film and show it. That is, the defendant in this case doesn't. I know that there are equipment houses that do.

Mr. Bickley: Is there a portable projection machine in the City of Dallas that you know of?

Mr. Hartt: I think there are some, Alex.

Mr. Bickley: That can be rented and be brought in here? The last time we talked to one of your people, you were sending to Switzerland to get a part for one.

Mr. Tobolowsky: It was my understanding during the recess—because even though you have said to the Court you don't believe we want to cooperate, I want to say to the City and the Court that we do desire to cooperate,—there is a portable that I think could be available, but I don't think it could be available at nine o'clock unless a decision is made fairly quickly. It takes time, even though it is a portable.

[fol. 142] Mr. Hartt: This machine weighs approximately a thousand pounds, I have just been informed.

Mr. Tobolowsky: You mean even a portable? I was told it was seven to eight hundred pounds.

Mr. Hartt: In other words, two of us together could not lift it. It takes a heavy truck and the conveying of it is important, both to and from the Court, but if the City wants to go into this, it is their burden, not ours, to risk our machine coming down here. The operator, we can refer them to the union and they can get a union operator and we will be glad to do that. But we don't want to have the peril of our own machine being transported out here without insurance to cover the machine and subject to condemnation by the City for a day. If the Court will recess us again, we will—

Mr. Tobolowsky: I will make some calls with the City Attorney, Your Honor.

The Court: Can't you conceive of some equity in what they say?

Mr. Bickley: Yes, I think there is some equity in what they say. I think the equity would be simply this, that they would agree to show it where they already have facilities available. This, I think, would be equity. But be that as it may, they don't choose to do this. Since they don't, we will do it another way. But as I point out to the Court at this time, we intend to mark this film and we shall always insist that this film be available. I think that is our right. [fol. 143] Mr. Tobolowsky: Your Honor, the defendant does not own the film; we only have it under a license agreement, which is in evidence, and we certainly don't have any ability to mark a film or take any part of it out or what have you without certain sworn affidavits, and it is a copyrighted matter. United Artists would have to speak to that subject.

Mr. Bickley: They are parties to the lawsuit. Further, Your Honor, these machines create a hazard. They create a fire hazard and in bringing them into this building and using them there is a possibility of damaging the floor with a machine this heavy; there is the possibility of fire; there are other possibilities that go with it. I think I am not overstating the case.

Mr. Hartt: If the Court please,—

Mr. Tobolowsky: I am advised only by a nod of the head that you are wrong, Alex.

Mr. Bickley: Is that right? There are others who know more than I do. Is that correct, no fire hazard?

Mr. Hartt: There has been a finding that this entire matter would come to an end in thirty-five days anyhow from last Monday, so it cannot be of too great significance if the picture, perhaps, if one of the intervenor's prints were held for that long.

Mr. McElroy: It would be a matter of extreme inconvenience. We don't have many prints of the picture and they are in use all over the country. This may seem odd to [fol. 144] the Court. There must be fifteen hundred theatres in the United States and I would hazard a guess that we do not have fifty prints of this picture. Now, obviously, our prints serve many theatres and we don't keep them on the shelf. If we kept them on the shelf, as everybody suggests, we'd have them on the shelf right now and we haven't got but one print in the City of Dallas. There will be times when we do not have a print in the City of Dallas; they will be in Houston, Fort Worth, San Antonio, they will be on the West Coast. If Mr. Bickley is serious, which I doubt, in suggesting that the print brought tomorrow is to be marked and retained by the Court, we object to it now and continue the objection from now until it is concluded. I am confident that, one, Mr. Bickley doesn't mean that, and two, the Court wouldn't handle it in that fashion. We have no objection to having a print produced. They can mark it on the can and we will give them a print at some later date that is substantially comparable to it, assuming we have enough advance notice to get it back from Washington or wherever it happens to be at the time.

The Court: Of course, the big item here is the expense of showing it and getting the equipment up to it, and it is not any easy matter. You don't want to yield to the City, I guess, for future cases, and they don't want to go into the motion picture business, having to get the equipment

to show one every time one comes along. Does anybody know what the expense of showing the thing in the court-
[fol. 145] room would be? Looks like your side ought to possibly know.

Mr. Hartt: We could get him the expense for the rental, Your Honor. I presume they contemplated the expense when they undertook the burden of this ordinance.

The Court: I expect they didn't contemplate this because it is something I never heard of.

Mr. McElroy: United Artists has no screening room in the City of Dallas; it has no projection equipment in the City of Dallas. We have to screen our pictures at somebody else's place of business, at Interstate's place of business from time to time.

Mr. Tobolowsky: Your Honor, insofar as what the cost of a projectionist would be, this would be a matter, I think, for the union, projectionists' union, to fix depending upon, I think, the length of time and whatever their rates are. With reference to the exact rental for a machine, if the Court would like to know that information, I think if I could have five minutes, I think I could find out the exact amount, including bringing it down here.

The Court: What would be the cost of an operator?

Mr. Tobolowski: This I don't know. I think this would be union scale, Your Honor.

The Court: There isn't any great secret about operating it, is there. You get it in that machine—

Mr. Tobolowsky: Yes, sir, I think there is, and more particularly with a portable. There probably has to be two
[fol. 146] projection machines rather than one, is that right? It would take either two projectors or you have to stop, and I think that is the way this is geared, for two projectors, and I think it would take an expert, Your Honor.

Mr. Hartt: If the Court please, I have been through this in trial and we found that a bailiff deputy sheriff who could run a small thirty-five millimeter camera did very great damage to a commercial film because he did not have familiarity with it. They would need a certain amount of

technical skill in this operation; they need a union operator. We had film all over the courtroom like a bunch of snakes because the man did not know how to run it. If we can recess now, we will be glad to go back and get the cost of it and line up an operator for them for tomorrow so they can have it.

The Court: That won't establish whether there is equipment here in Dallas, will it?

Mr. Bickley: We will have to do that to establish whether it is even available or not.

Mr. Tobolowsky: I checked on that. Interstate does not own one but I think we can get one available.

Mr. Bickley: Your Honor, we will find out what it costs and advise the Court in a few minutes.

The Court: All right. Do that.

(Court was in recess, after which time the following proceedings were had:)

[fol. 147] Mr. Bickley: Your Honor, we have come to an agreement on this.

(Conference at bench among all attorneys and the Court.)

(Court was in recess until nine o'clock, February 18, at which time the following proceedings were had:)

(Film "Viva Maria!" shown in courtroom.)

Mr. Bickley: If it please the Court, the plaintiff rests their case.

The Court: Does the defendant have any testimony to offer?

Mr. Hartt: I don't anticipate that we would, but before going forward, we have a motion, if the Court please, at this time. We move the Court, considering the law on the subject we have already argued without going into that again, we simply say that this picture certainly is not one to be classified as "Not suitable for young people," and, the Court having made an inspection of the film at this time,

that the plaintiff has not made a case to show that this picture should be restricted or limited in its exhibition to anyone. We believe that finding should be made and I ask the Court at this time to so make it and this matter will be over.

The Court: Well, I will carry it along, if you have any testimony to offer.

Mr. Hartt: There is an intervenor; perhaps he has something to say. Do you have anything?

Mr. McElroy: You have no evidence to offer?

[fol. 148] Mr. Hartt: Well, I would make a motion at the end of plaintiff's case. I don't know whether you want to make a motion too.

Mr. McElroy: The intervenor does have an affidavit it would like to offer in evidence at this time.

The Court: Proceed.

Mr. Hartt: If there is no other motions then, at this time I would tell the Court we have no evidence to offer.

(Intervenor's Exhibit 2 marked for identification.)

Mr. Bickley: If it please the Court, directed to Intervenor's Exhibit No. I-2, I presume it is,—is that the way you have designated it?—we object to its introduction because it is irrelevant and immaterial to any question in this particular case.

The Court: May I see it?

Mr. Bickley: Yes, sir. And for the additional reason, Your Honor, that it also constitutes hearsay.

Mr. Tobolowsky: Your Honor, the print which is the only print of "Viva Maria!" in the City of Dallas is being exhibited at the Esquire Theatre and it was brought down from the Esquire Theatre last night after the performance was over. The theatre opens at twelve-forty-five today. With the consent of the City Attorney, the print is being taken back to the theatre, if that meets with the Court's approval.

The Court: Oh, yes. I understand for future use it will be available.

[fol. 149] Mr. Tobolowsky: A positive print. At this point United Artists could speak to that subject more than the exhibitor, but I understand that a number of positive prints are made and with enough notice I think a print can be obtained.

Mr. McElroy: Your Honor, I think the record ought to be clear, especially as to what United Artists is in a position to agree to. It is expected that the Dallas office of United Artists will have anywhere from fifteen to twenty-five prints of this picture on hand in the State of Texas and Oklahoma to serve some twelve hundred theatres. I cannot assure the Court and don't want to be in a position of assuring the Court that if the film is asked for tomorrow, a print will be available. I can only say if this Court or some other Court gives reasonable notice, we will have a print, but it can't be "tell me today we need it and we will have it tomorrow," because it may be in Houston.

The Court: That ought to serve the purpose. How about that other case?

Mr. Hartt: You mean the other trial case?

The Court: Yes, sir.

Mr. Bickley: The plaintiff is ready to proceed, Your Honor. Do you want me to get through with it and argue both of them?

Mr. Hartt: If the Court please, I think we prefer at this time to conclude this one because we have some different parties here who do not need to stay through the trial.

[fol. 150] The Court: Proceed with the argument.

(Argument was presented by all parties.)

The Court: Oh, I realize you gentlemen might be right. There are two or three features in this picture that look to me would be unsuitable to young people. Actually, they have tried to track that Friedman case, looks like, in this ordinance, and if any ordinance can be passed, why, it looks like they have taken every ground to pass one, if one can be valid, that is, valid. So I enjoin the exhibitor, its agents, servants, attorneys and employees from exhibiting it. I

guess it is like a book by Mark Twain where he had a vaudeville show and was making no money, the owners of it. Then he had a man to get nude and painted him in striped paint, charged a dollar, which was unheard of in those days, limited it to men only and said, "If this doesn't get the money, I don't know Arkansas," and they did quite well. I sustain the City's position, find it okay, and enjoin them.

Mr. Hartt: If the Court please, we except and give notice of appeal.

(Discussion between court and counsel concerning the next case.)

Mr. Hartt: If the Court please, we have a matter here now which will be going up on appeal, as the Court might anticipate. It is a temporary injunction proceeding. As the Court is aware, it is not required that we have findings of fact and conclusions of law to appeal such an item. How-[fol. 151] ever, it is welcome to have them, and we would ask the Court if the Court would be willing to assist us in this matter and make findings at the Court's earliest convenience so that we can have the matter before the appellate court fully.

The Court: I believe that is the only advantage that a nisi prius judge has in a matter of this kind: he doesn't have to file any.

Mr. Hartt: And I can go up without it, but I am inviting the Court to do it, if the Court will.

The Court: I decline. I have so many irons for a little fellow. I have taken on more than I can do, trying to decide a big case here, and I have got others at home and here and in Hill County where I have been helping out, and I do not have time to do it. I decline.

Mr. Hartt: I don't want to press this, but I have another problem. In the Vannis case we made such a request in writing. I don't want to belabor this thing, but the Fort Worth Court of Civil Appeals cut me up badly saying they didn't get to see what the trial court saw. Would the Court

be willing to let the judgment state that in open court as one of the things that happened, we made this request and the Court declined?

The Court: Yes, of course, that is a correct statement.

Mr. Tobolowsky: Your Honor, before you close the proceedings and while the City Attorney is here, the defendant, of course, wants to abide by the Court's decision and is [fol. 152] prepared to do so. It is a question now of timing. Is the injunction issued immediately, because that picture is going to start playing right now?

The Court: It is issued now.

Mr. Tobolowsky: Your Honor, there is no possible way we can change any advertising for today. I will call the client and instruct him to change it for tomorrow, and I will call the client and instruct him not to sell any tickets in violation of the ordinance as of right now.

Mr. Bickley: We agree with this, Your Honor.

Mr. Tobolowsky: I will call immediately.

Mr. Hartt: If the Court please, the City has one other burden that should be dealt with while we are assembled on this matter, and that is to get a speedy trial on the merits. It was heard today in view of the fact that you were kind enough to hear it, but the City has the burden of getting a trial on the merits also at an early opportunity. I need to consult with both my parties, also the intervenor and the City, but this afternoon we should be able to come back to you at that time and ask the Court to fix the time that it can be heard.

Mr. Bickley: We will be glad to try to agree with you on the time. He would have gotten a speedy trial on the merits; if he had agreed to it, this could have been the trial on the merits, Your Honor.

The Court: They may want a jury.

(Discussion among attorneys.)

[fol. 153]

State of Texas
County of Ellis

I, Mary Cave, official court reporter of the 40th Judicial District of the State of Texas, do hereby certify that the above and foregoing 111 pages of typewritten matter constitute a transcript of the evidence, in question and answer form, in the cause of the City of Dallas vs. Interstate Circuit, Inc., No. 66-1280-B in the 44th Judicial District Court of Dallas County, Texas, and I do further certify that such transcript is true and correct.

Witness my hand this the 23rd day of February, 1966.

Mary Cave.

Approved:

Ted P. MacMaster, Attorney for Plaintiff.

Grover Hartt, Jr., Attorney for Defendant.

Dan McElroy, Attorney for Intervenor.

[fol. 155]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

PLAINTIFF'S EXHIBIT 1

ORDINANCE NO. 11284

An Ordinance Providing for the Amendment of Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas by adding thereto a new chapter known as Chapter 46A; Providing for the establishment of a Motion Picture Classification Board; Outlining classification procedures; Defining Offenses related to the exhibition of films classified "Not Suitable for Young Persons"; Providing for the issuance, revocation and suspension of licenses, Providing for judicial review; Defining public nuisances;

Providing for injunctive relief; Providing for an exception to State law; Providing for a severability clause; Providing for a Penalty; Providing for the repeal of Ordinance No. 10963 enacted by the City Council on April 5, 1965, and enacting this ordinance in lieu thereof; and Declaring an Emergency.

WHEREAS, the City Council after investigation on the part of the members of said Council and the hearing of evidence and testimony at a public hearing called for that purpose, is of the opinion and finds that certain commercially produced motion picture films are one of the contributing causes to juvenile delinquency, sexually promiscuous behavior and, along with other factors, tend to incite criminal behavior on the part of young persons; and

WHEREAS, the City Council is of the opinion that legislative action should be taken by this Council for the purpose of classifying the movies to which such young persons of school age are admitted without proper supervision; and

WHEREAS, the City Council is of the opinion and finds that a great portion of said movies are available for screening and for showing more than thirty days prior to their initial [fol. 156] exhibition and that the benefits to the public will far exceed the burden placed upon the motion picture industry by having said movies screened and classified; and

WHEREAS, the City Council is of the opinion and finds that motion picture films possess a greater capacity for good and for evil among young persons of school age than most other modes of expression and are, therefore, affected with a public interest; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas, be, and it is hereby amended by adding thereto a new chapter known as Chapter 46A, consisting of Sections 46A-1 through 46A-11 inclusive, which shall read as follows:

"CHAPTER 46A

MOTION PICTURE CLASSIFICATION ORDINANCE

§ 46A-1 Definition of Terms
§ 46A-2 Establishment of Classification Board
§ 46A-3 Classification Procedure
§ 46A-4 Offenses
§ 46A-5 License
§ 46A-6 Revocation or suspension of license
§ 46A-7 Judicial Review
§ 46A-8 Public Nuisances
§ 46A-9 Injunctions
§ 46A-10 Exception to State Law
§ 46A-11 Severability Clause

[fol. 157]

Section 46A-1. *Definition of Terms*:

(a) 'Film' means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(b) 'Exhibit' means to project a film at any motion picture theatre or other public place within the City of Dallas to which tickets are sold for admission.

(c) 'Exhibitor' means any person, firm or corporation which exhibits a film.

(d) 'Young person' means any person who has not attained his sixteenth birthday.

(e) 'Board' means the Dallas Motion Picture Classification Board established by Section 46A-2 of this ordinance.

(f) 'Not suitable for young persons' means:

(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the

judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extra-marital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.

A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the [fol. 158] Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons.

(g) 'Classify' means to determine whether a film is:

(1) Suitable for young persons, or;

(2) Not suitable for young persons.

(h) 'Advertisement' means any commercial promotional material initiated by an exhibitor designed to bring a film to public attention or to increase the sale of tickets to exhibitions of same, whether by newspaper, billboard, motion picture, television, radio, or other media within or originating within the City of Dallas.

(i) 'Initial exhibition' means the first exhibition of any film within the City of Dallas.

(j) 'Subsequent exhibition' means any exhibition subsequent to the initial exhibition, whether by the same or a different exhibitor.

(k) 'File' means to deliver to the City Secretary for safekeeping as a public record of the City of Dallas.

[fol. 159] (l) 'Classification order' means any written determination by a majority of the Board classifying a film, or granting or refusing an application for change of classification.

(m) The term 'Board' as used and applied in subsection (a) of Section 46A-7 shall include the City of Dallas when attempting to enforce this ordinance and the City Attorney of the City of Dallas when representing the Board or the City of Dallas.

Section 46A-2. *Establishment of Board*:

There is hereby created a Board to be known as the Dallas Motion Picture Classification Board which shall be composed of a Chairman and Eight Members to be appointed by the Mayor and City Council of the City of Dallas, whose terms shall be the same as members of the City Council. Such members shall serve without pay and shall adopt such rules and regulations as they deem best governing their action, proceeding and deliberations and time and place of meeting. These rules and regulations shall be subject to approval of the City Council. If a vacancy occurs upon the Board by death, resignation or otherwise, the governing body of the City of Dallas shall appoint a member to fill such vacancy for the unexpired term.

The Chairman and all Members of the Board shall be good, moral, law-abiding citizens of the City of Dallas, and shall be chosen so far as reasonably practicable in such a manner that they will represent a cross section of the community. Insofar as practicable, the members appointed

to the Board shall be persons educated and experienced in one or more of the following fields: art, drama, literature, philosophy, sociology, psychology, history, education, music, science or other related fields. The City Secretary shall act as Secretary of the Board.

[fol. 160] Section 46A-3. *Classification Procedure*:

(a) Before any initial exhibition, the exhibitor shall file a proposed classification of the film to be exhibited, stating the title of the film and the name of the producer, and giving a summary of the plot and such other information as the Board may by rule require, together with the classification proposed by the exhibitor. The Board shall examine such proposed classification, and if it approves same, shall mark it 'approved' and file it as its own classification order. If the Board fails to act, that is, either file a classification order or hold a hearing within five (5) days after such proposed classification is filed, the proposed classification shall be considered approved.

(b) If upon examination of the proposed classification a majority of the Board is not satisfied that it is proper, the Chairman shall direct the exhibitor to project the film before any five (5) or more members of the Board, at a suitably equipped place and at a specified time, which shall be the earliest time practicable with due regard to the availability of the film. The exhibitor, or his designated representative, may at such time make such statement to the Board in support of his proposed classification and present such testimony as he may desire. Within two (2) days, the Board shall make and file its classification of the film in question.

(c) Any initial or subsequent exhibitor may file an application for a change in the classification of any film previously classified. No exhibitor shall be allowed to file more than one (1) application for change of classification of the same film. Such application shall contain a sworn statement of the grounds upon which the application is based. Upon filing of such application, the City Secretary

shall bring it immediately to the attention of the Chairman of the Board, who upon application by the exhibitor shall set a time and place for a hearing and shall notify the applicants and all interested parties, including all exhibitors who may be exhibiting or preparing to exhibit the film. The Board shall view the film and at such hearing, hear the statements of all interested parties, and any [fol. 161] proper testimony that may be offered, and shall within two (2) days thereafter make and file its order approving or changing such classification. If the classification of a film is changed as a result of such hearing to the classification 'not suitable for young persons', the exhibitors showing the film shall have seven (7) days in which to alter their advertising and audience policy to comply with such classification.

(d) Upon filing by the Board of any classification order, the City Secretary shall immediately issue and mail a notice of classification to the exhibitor involved and to any other exhibitor who shall request such notice.

(e) A classification shall be binding on any subsequent exhibitor unless and until he obtains a change of classification in the manner above provided.

Section 46A-4. *Offenses*:

(a) It shall be unlawful for any exhibitor or his employee:

(1) To exhibit any film which has not been classified as provided in this ordinance.

(2) To exhibit any film classified 'not suitable for young persons' if any current advertisement of such film by such exhibitor fails to state clearly the classification of such film.

(3) To exhibit any film classified 'not suitable for young persons' without keeping such classification posted prominently in front of the theatre in which such film is being exhibited.

[fol. 162] (4) Knowingly to sell or give to any young person a ticket to any film classified 'not suitable for young persons'.

(5) Knowingly to permit any young person to view the exhibition of any film classified 'not suitable for young persons'.

(6) To exhibit any film classified 'not suitable for young persons' or any scene or scenes from such a film, or from an unclassified film, whether moving or still, in the same theatre and on the same program with a film classified 'suitable for young persons'; provided that any advertising preview or trailer containing a scene or scenes from an unclassified film or a film classified 'not suitable for young persons' may be shown at any time if same has been separately classified as 'suitable for young persons' under the provisions of Section 46A-3 of this ordinance.

(7) To make any false or willfully misleading statement in any proposed classification, application for change of classification, or any other proceedings before the Board.

(8) To exhibit any film classified 'not suitable for young persons' without having in force the license hereinafter provided.

(b) It shall be unlawful for any young person:

(1) To give his age falsely as sixteen (16) years of age or over, for the purpose of gaining admittance to an exhibition of a film classified 'not suitable for young persons'.

(2) To enter or remain in the viewing room of any theatre where a film classified 'not suitable for young persons' is being exhibited.

[fol. 163] (3) To state falsely that he or she is married for the purpose of gaining admittance to an ex-

hibition of a film classified as 'not suitable for young persons'.

(c) It shall be unlawful for any person:

(1) To sell or give to any young person a ticket to an exhibition of a film classified 'not suitable for young persons'.

(2) To make any false or willfully misleading statement in an application for change of classification or in any proceeding before the Board.

(3) To make any false statements for the purpose of enabling any young person to gain admittance to the exhibition of a film classified 'not suitable for young persons'.

(d) To the extent that any prosecution or other proceeding under this ordinance, involves the entering, purchasing of a ticket, or viewing by a young person of a film classified 'not suitable for young persons', it shall be a valid defense that such young person was accompanied by his parent or legally appointed guardian, husband or wife, throughout the viewing of such film.

Section 46A-5. *License*:

Every exhibitor holding a motion picture theatre or motion picture show license issued pursuant to Chapter 46 of the 1960 Revised Code of Civil and Criminal Ordinances of the City of Dallas shall be entitled to issuance of a license by the City Secretary to exhibit films classified 'not suitable for young persons'.

[fol. 164] Section 46A-6. *Revocation or suspension of license*:

Whenever the City Attorney or any person acting under his direction, or any ten (10) citizens of the City of Dallas, shall file a sworn complaint with the City Secretary stat-

ing that any exhibitor has repeatedly violated the provisions of this ordinance, or that any exhibitor has persistently failed to use reasonable diligence to determine whether those seeking admittance to the exhibition of a film classified 'not suitable for young persons' are below the age of sixteen (16), the City Secretary shall immediately bring such complaint to the attention of the City Council who shall set a time and place for hearing such complaint and cause notice of such hearing to be given to the complainants and to the exhibitor involved. The City Council shall have authority to issue subpoenas requiring witnesses to appear and testify at such hearing, and any party to such hearing shall be entitled to such process. If, after hearing the evidence, the City Council shall find the charges in such complaint to be true, it shall issue and file an order revoking or suspending the license above provided, insofar as it grants the privilege of showing such classified pictures, for a specific period not to exceed one (1) year, or may issue a reprimand if it is satisfied that such violation will not continue.

The City Council likewise, after notice and hearing, may revoke or suspend the license of any exhibitor who has refused or unreasonably failed to produce or delayed the submission of a film for review, when requested by the Board.

Section 46A-7. *Judicial Review*:

(a) Within two (2) days after the filing of any classification by the Board, other than an order approving the classification proposed by an exhibitor, any exhibitor may file a notice of non-acceptance of the Board's classification, stating his intention to exhibit the film in question under a different classification. Thereupon it shall be the duty of the Board to do the following:

[fol. 165] (1) Within three (3) days thereafter to make application to a District Court of Dallas County, Texas, for a temporary and a permanent injunction to

enjoin such defendant-exhibitor, being the exhibitor who contests the classification, from exhibiting the film in question contrary to the provisions of this ordinance.

(2) To have said application for temporary injunction set for hearing within five (5) days after the filing thereof. In the event the defendant-exhibitor appears at or before the time of the hearing of such temporary injunction, waives the notice otherwise provided by the Texas Rules of Civil Procedure, and requests that at the time set for such hearing the Court proceed to hear the case under the Texas Rules of Civil Procedure for permanent injunction on its merits, the Board shall be required to waive its application for temporary injunction and shall join in such request. In the event the defendant-exhibitor does not waive notice and/or does not request an early hearing on the Board's application for permanent injunction, it shall nevertheless be the duty of the Board to obtain the earliest possible setting for such hearing under the provisions of State law and the Texas Rules of Civil Procedure.

(3) If the injunction is granted by the trial court and the defendant-exhibitor appeals to the Court of Civil Appeals, the Board shall waive any and all statutory notices and times as provided for in the Texas State Statutes and Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of appealing exhibitor's brief, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the [fol. 166] submission of the case to the Court of Civil Appeals, and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Court of Civil Appeals to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(4) If the Court of Civil Appeals should by its judgment affirm the judgment of the trial court granting the injunction and the appealing exhibitor should file an application for writ of error to the Texas Supreme Court, the Board shall be required to waive any and all notices and times as provided for in the Texas State Statutes and the Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of the application for writ of error, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Supreme Court and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Supreme Court to advance the cause upon the docket and to give it a preferential setting the same as its afforded an appeal from a temporary injunction or other preferential matters.

(5) If the District Court denies the Board's application for injunction, and the Board elects to appeal, the Board shall be required to waive all periods of time allowed it by the Texas Rules of Civil Procedure and if a motion for new trial is required, shall file said motion within two (2) days after the signing of the judgment, (or on the following Monday if said period ends on a Saturday or Sunday, or on the day following if the period ends on a Legal Holiday), shall not amend said motion and shall obtain a hearing on such motion within five (5) days' time. If no motion for new trial is required as a prerequisite to an appeal under the Texas Rules of Civil Procedure, the Board [fol. 167] shall not file such a motion. Within ten (10) days after the judgment is signed by the District Court denying such injunction or within ten (10) days after the order overruling the Board's motion for new trial is signed, if such motion is required, the Board shall complete all steps necessary for the perfection of its appeal to the Court of Civil Appeals, including the fil-

ing of the Transcript, Statement of Facts and Appellant's brief. Failure to do so shall constitute an abandonment of the appeal. On filing the record with the Court of Civil Appeals, the Board shall file a motion to advance requesting the Court to give a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

(6) If the Court of Civil Appeals reverses the trial court after the trial court has granted an injunction, or if the Court of Civil Appeals refuses to reverse the trial court after that court has failed to grant an injunction, then if the Board desires to appeal from the decision of the Court of Civil Appeals by writ of error to the Supreme Court of the State of Texas, it must file its motion for rehearing within two (2) days of rendition of the decision of the Court of Civil Appeals (or on the following Monday, if said period ends on a Saturday or Sunday, or on the day following if the period ends on a Legal Holiday), and shall file its application for writ of error within ten (10) days after the Court of Civil Appeals' order overruling such motion for rehearing, and failure to do so shall waive all rights to appeal from the decision of the Court of Civil Appeals. At the time of filing the application for writ of error, the Board shall also request the Supreme Court to give the case a preferential setting and advance the same on the docket.

(b) The filing of such notice of non-acceptance shall not suspend or set aside the Board's order, but such order shall [fol. 168] be suspended at the end of ten (10) days after the filing of such notice unless an injunction is issued within such period.

(c) Failure of any exhibitor to file the notice of non-acceptance within two (2) days as required in Subdivision (1) of this Section 46A-7, shall constitute acceptance of

such classification order and such exhibitor shall be bound by such order in all subsequent proceedings except such proceedings as may be had in connection with any application for change of classification under Subdivision (c) of Section 46A-3 above.

Section 46A-8. *Public Nuisances*:

The following acts are declared to be public nuisances:

(a) Any violation of Subdivisions (1), (2), (3), or (6), of Subdivision (a) of Section 46A-4 of this ordinance.

(b) Any exhibition of a film classified as 'not suitable for young persons' at which more than three (3) young persons are admitted.

(c) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who fails to use reasonable deligence to determine whether persons admitted to such exhibition are persons under the age of sixteen (16) years.

(d) Any exhibition of a film classified as 'not suitable for young persons' by an exhibitor who has been convicted of as many as three (3) violations of Subdivisions (4) or (5) of Subdivision (a) of Section 46A-4 of this ordinance in connection with the exhibition of the same film.

Section 46A-9. *Injunctions*:

[fol. 169] Whenever the Board has probable cause to believe that any exhibitor has committed any of the acts declared in Section 46A-8 above to be a public nuisance, the Board shall have the duty to make application to a court of competent jurisdiction for an injunction restraining the commission of such acts.

Section 46A-10. *Exception to State Law*:

Nothing in this ordinance shall be construed to regulate public exhibitions pre-empted by Article 527 of the Penal Code of the State of Texas, as amended.

Section 46A-11. *Severability Clause*:

Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance, and the same are deemed severable for this purpose."

Section 2. That any person who shall violate any provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed Two Hundred Dollars ($200.00) and each offense shall be deemed to be a separate violation and punishable as a separate offense, and each day that a film is exhibited which has not been classified according to this ordinance shall be a separate offense.

Section 3. That Ordinance No. 10963 heretofore enacted by the City Council of the City of Dallas on April 5, 1965, be and the same is hereby in all things repealed and held for naught, and this ordinance is enacted in lieu thereof.

[fol. 170] Section 4. The fact that Ordinance No. 10963 previously passed by the City Council of the City of Dallas has been declared to be unenforceable in the Courts by the Federal District Court, creates an urgency and an emergency in the preservation of the public peace, comfort and general welfare and requires that this ordinance shall take effect immediately from and after its passage, and it is accordingly so ordained.

APPROVED AS TO FORM:

N. ALEX BICKLEY, CITY ATTORNEY

PASSED: November 22, 1965

CORRECTLY ENROLLED: November 22, 1965

N. ALEX BICKLEY
City Attorney

ATTEST:

HAROLD G. SHANK
City Secretary

STATE OF TEXAS
COUNTY OF DALLAS
CITY OF DALLAS

I, Harold G. Shank, City Secretary of the City of Dallas, Texas, do hereby certify that the above and foregoing in a true and correct copy of Ordinance (passed) by the City Council of the City of Dallas, Texas, Nov. 22, 1965.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, This the 15th day of Feb. A.D. 1966.

HAROLD G. SHANK
City Secretary of the
City of Dallas, Texas

Interstate Circuit, inc.

majestic theatre building dallas, texas 75201

January 24, 1966.

Filed in my office this the
24 day of Jan 19 66
City Secretary, Dallas

Dallas Motion Picture Classification Board
c/o City Secretary
City Hall
Dallas, Texas

RE: Motion Picture: VIVA MARIA!
Theatre: ESQUIRE

Gentlemen:

Pursuant to Section 46A-3(a) of City Ordinance No. 11,284, herewith is furnished material required. The undersigned hereby proposes to classify the above film for exhibition in the above theatre for initial exhibition in the City of Dallas as "suitable for young persons".

Yours very truly,

INTERSTATE CIRCUIT, INC.,

RAYMOND WILLIE,
Vice Pres. & Gen. Mgr.

c.
(att)

Information required by Section 46A-3 attached.

In the 44th Judicial District Court
In and for Dallas County, Texas
Plaintiff's Exhibit 3
[fol. 171]
135

ATTACHMENT TO PETITIONER'S EXHIBIT 3

PETITIONER'S EXHIBIT 8

[fol. 172]

Viva Maria (Motion Picture Herald - 1/5/66 Issue)

United Artists — A Big Comedy

(Panavision; Color)

Let's roll out the superlatives for "Viva Maria," one of the funniest and most imaginative motion pictures to appear on the screen in a very long time.

They said it couldn't be done, when Louis Malle expressed his intention to make a film starring Brigitte Bardot and Jeanne Moreau, two independent females who were reported to have temperaments that would collide on close contact. It turned out to be a stroke of genius in casting; the two French actresses make an unbeatable comedy team that dominates this film in terms of both marquee value and actual performances.

Viva Malle! He not only did a superb job of directing this large-scale color production, but also was co-producer with Oscar Dancigers and shares the original screenplay credits with Jean-Claude Carriere. A big outdoor comedy, beautifully photographed on location in Mexico, the film moves with unbelievable energy as it relates how a troupe of acrobats, magicians, strongmen and other performers get embroiled in a Mexican-style peasant revolution at the turn of the century.

One of the amazing things about this film is that although it was done on a lavish scale, the humor is never diluted, a pitfall that most films of this type have been unable to avoid. Presented in a French version, with English subtitles, in its initial major bookings, the film will also be presented later in a dubbed version. But even general audiences will love the French version, for most of the comedy is visual. The funniest scenes —a rider trying to dash away on a marble horse, a pigeon taught to drop grenades on the enemy, etc.—must be seen to be appreciated.

Brigitte Bardot is cast as the daughter of an Irish rebel, whose specialty is blowing up British soldiers around the globe. Finally, in South America, her father dies doing the thing he likes best and Bardot must hide with a troupe of performers touring the countryside. She joins singer Jeanne Moreau in a Parisian dance hall act, accidently invents a striptease number and the two girls become a hit.

Both named Maria, the song and dance girls get involved in a revolution led by handsome George Hamilton. When Hamilton is killed, Moreau, who had fallen deeply in love with, him, decides to continue his crusade. The two Marias make a deliciously contrasting pair of revolutionaries. Bardot's background has made her an expert on weapons and explosives: She conveys the image of an innocent girl with a smile on her face and a stick of dynamite in her hand. Moreau plays the serious leader, always mourning her lost love.

Bardot and Moreau make an exciting comedy team. In addition to the two actresses and Malle, credit for this film should also go to director of photography Henri Decae and Georges Delerue, who composed the rousing original music. "Viva Maria" is a French-Italian co-production of Nouvelles Editions de Films-Les Productions Artistes Associes, S.A. (Paris) and Vides Cinematografica (Rome).

In its imaginative style, rich and irreverent humor and excellent production techniques, "Viva Maria" reminds one of another big comedy hit of several years ago. It may very well be the "Tom Jones" of 1966.

Seen at a screening in New York. Reviewer's Rating: Excellent—SY OSHINSKY.

Release date, Spring, 1966. Running time, 119 minutes.

Maria II .....Brigitte Bardot
Maria I .....Jeanne Moreau
Flores .....George Hamilton
Madam Diogene .....Paulette Dubost
Diogene .....Gregor Von Rezzori
Werther .....Poldo Bendandi
Rodolfo .....Claudio Brook
Rodriguez .....Carlos Lopez Moctezuma
Juanito .....Jonathan Eden
Francisco Reiguera, Adriana Roel, Jose

STATE OF TEXAS
COUNTY OF DALLAS
CITY OF DALLAS

I, Harold G. Shank, City Secretary of the City of Dallas, Texas do hereby certify that the above and foregoing is a true and correct copy of application for classification by the Dallas Motion Picture Classification Board filed in my office the 24th day of January 1966.

WITNESS MY HAND AND the seal of the City of Dallas, Texas, This the 15th day of February A.D. 1966.

Harold G. Shank
City Secretary of the
City of Dallas, Texas

[fol. 173]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

PLAINTIFF'S EXHIBIT 4

DALLAS MOTION PICTURE
CLASSIFICATION BOARD

Wednesday, February 9, 1966—12:15 P.M.

Regular Meeting, John D. Gilliland,
Vice-Chairman, Presiding.

ROLL CALL:

Present: John D. Gilliland, Mrs. Russell Pollard, Mrs. Van Calvin Ellis, Mrs. Edwin Ornish, Reverend J. Robert Maceo, Morton A. Lewis, John P. Reed and Alternate Members A. C. Moser, Jr., and Charles Bartush—9

Absent: Dan Eddy, Reverend Ira Galloway—2

The Minutes of the meetings of January 31, 1966, and February 4, 1966, were read and approved.

The movie STRANGE BEDFELLOWS (Delman), heretofore taken under advisement to be screened, was again called. After discussion, it was moved by Mrs. Ornish and seconded by Mrs. Ellis that the movie STRANGE BEDFELLOWS be classified as "Suitable for Young Persons." Motion unanimously carried.

The movie THAT MAN IN ISTANBUL (Wilshire, etc.), heretofore taken under advisement for additional information, was again called. After consideration, it was moved by Mr. Lewis and seconded by Mrs. Ellis that the movie THAT MAN IN ISTANBUL be classified as: "Suitable for Young Persons."

ROLL CALL ON MOTION:

Aye—Gilliland, Ellis, Maceo, Lewis, Reed, Pollard—6
Nay—Ornish, Moser, Bartush—3
Motion carried.

The movie VIVA MARIA (Esquire) heretofore taken under advisement for screening, was again called. After discussion, it was moved by Reverend Maceo and seconded by Mrs. Ellis that the movie VIVA MARIA be classified as: "Unsuitable for Young Persons." Motion carried, Mrs. Ornish not voting.

The movie MOMENT TO MOMENT (Palace) heretofore taken under advisement for screening, was again called. After consideration, it was moved by Mr. Lewis and seconded by Mr. Moser that the movie MOMENT TO MOMENT be classified as: "Suitable for Young Persons." Motion unanimously carried.

The movie THE SILENCERS (Majestic) heretofore taken under advisement for screening, was again called. After consideration, it was moved by Mr. Moser and seconded by Mrs. Pollard that the movie THE SILENCERS be classified as: "Unsuitable for Young Persons." Motion unanimously carried.

The movie INSIDE DAISY CLOVER (Palace) heretofore taken under advisement for screening, was again called. After consideration, it was moved by Mrs. Pollard and seconded by Mr. Reed that the movie INSIDE DAISY CLOVER be classified as: "Suitable for Young Persons." Motion unanimously carried.

The movie BLOOD AND BLACK LACE (Texas, etc.) heretofore taken under advisement for screening, was again called. After consideration, it was moved by Mrs. Pollard and seconded by Mr. Moser that the movie BLOOD AND BLACK LACE be classified as: "Not Suitable for Young Persons." Motion unanimously carried.

Mr. Lewis: "I move that the Board affirmatively classify I'LL TAKE SWEDEN as: 'Not Suitable for Young Persons;' that the City Secretary affirmative notify the exhibitor that the Board has so classified it previously and reiterate it today; and, further, in the even an application for suitability is made as a reclassification, that the requisites of the ordinance were not complied with, and the Board did not consider it as a reclassification request, but advise you that it is not suitable." Motion seconded by Mrs. Pollard. Motion unanimously carried.

It was moved by Mr. Lewis and seconded by Mr. Bartush that the movie WORLD OF SUZIE WONG be screened. Motion unanimously carried. (Park Forest, etc.)

[fol. 174]

It was moved by Mr. Lewis and seconded by Mrs. Pollard that additional information be obtained from the applicant on the movie WHO'S GOT THE ACTION (Park Forest, etc.). Motion unanimously carried.

The following is a list of movies presented to the Board upon which no specific action was taken thereby rendering them classified as: "Suitable for Young Persons."

THE TRAIN WAR PARTY HOW TO MURDER YOUR WIFE

The Dallas Motion Picture Classification Board Adjourned.

Approved DAN EDDY
Chairman

ATTEST:

HAROLD G. SHANK
Secretary

STATE OF TEXAS
COUNTY OF DALLAS
CITY OF DALLAS

I, Harold G. Shank, City Secretary of the City of Dallas, Texas do hereby certify that the above and foregoing is a true and correct copy of the minutes of the Dallas Motion Picture Classification Board at their meeting of February 9, 1966.

WITNESS MY HAND AND THE SEAL of the City of Dallas, Texas, This the 15th day of February A.D. 1966.

(Seal)

HAROLD G. SHANK
City Secretary of the
City of Dallas, Texas

[fol. 175]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

PLAINTIFF'S EXHIBIT 5

February 9, 1966

Mr. Raymond Willie
Vice Pres. & Gen. Mgr.
Interstate Circuit, Inc.
Majestic Theatre Building
Dallas, Texas 75201

Filed in my office this the 24th day of Jan. 1966

Dear Mr. Willie:

On February 9, 1966, the Dallas Motion Picture Classification Board met, and a majority of the Board was not satisfied that your proposed classification of "Suitable for Young Persons" was proper for the following movies:

VIVA MARIA	Esquire Theatre
THE SILENCERS	Majestic Theatre

The Board classified these movies as NOT SUITABLE FOR YOUNG PERSONS, and in accordance with City Ordinance No. 11284, the Board directs that you exhibit these movies as ones: "Not Suitable for Young Persons."

The following movies were classified by the Board as: "Suitable for Young Persons."

Inside Daisy Clover	Palace Theatre
That Man in Istanbul	Wilshire Theatre
Moment to Moment	Palace Theatre.

Yours very truly,
Harold G. Shank
City Secretary

HGS/cas

State of Texas
County of Dallas
City of Dallas

I, Harold G. Shank, City Secretary of the City of Dallas, Texas do hereby certify that the above and foregoing is a true and correct copy of the classification of the motion picture Viva Maria by the Dallas Motion Picture Classification Board.

Witness my Hand and the seal of the City of Dallas, Texas, This the 15th day of February A.D. 1966.

Harold G. Shank
City Secretary of the
City of Dallas

[fol. 176]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

PLAINTIFF'S EXHIBIT 6

Filed in my office this the 11 day of Feb. 1966

WHEE ARMSTRONG
Asst City Secretary,
Dallas

INTERSTATE CIRCUIT, INC.

EXECUTIVE OFFICES
MAJESTIC THEATRE BUILDING, DALLAS, TEXAS 75201

February 11, 1966

Dallas Motion Picture Classification Board
c/o City Secretary
City Hall
Dallas, Texas

Re: Motion Picture: VIVA MARIA
Theatre: Esquire

Gentlemen:

Pursuant to Section 46A-7(a) of City Ordinance No. 11,284, the above named exhibitor hereby notifies you of non-acceptance of your classification and advises that the above named exhibitor intends to exhibit the above named film under a classification of "suitable for young persons".

Yours very truly,

INTERSTATE CIRCUIT, INC.

By: VAN ALEN HOLLOMON
Van Alen Hollomon
Secretary

STATE OF TEXAS
COUNTY OF DALLAS
CITY OF DALLAS

I, Harold G. Shank, City Secretary of the City of Dallas, Texas do hereby certify that the above and foregoing is a true and correct copy of Interstate Circuit, Inc.'s non-acceptance of the Dallas Motion Picture Classification Board's classification of the motion picture VIVA MARIA filed in my office the 11th day of February, 1966.

WITNESS MY HAND AND the seal of the City of Dallas, Texas, This the 15th day of February A.D. 1966.

HAROLD G. SHANK
City Secretary of the
City of Dallas

[fol. 177]

IN THE 44TH JUDICIAL DISTRICT COURT
IN AND FOR DALLAS COUNTY, TEXAS

PLAINTIFF'S EXHIBIT 9

(See opposite) ☞

Viva **Fun!** Viva **Can-Can!** Viva **Adventure!** Viva **Strip-Tease!** Viva **Love!** Viva **Boom-Boom!**

VIVA BARDOT
VIVA MOREAU

P-9
2-15-66

IN LOUIS MALLE'S **"VIVA MARIA"!**

(Viva Don't Miss it!)

EXCLUSIVE FIRST DALLAS ENGAGEMENT

BRIGITTE BARDOT · JEANNE MOREAU in **LOUIS MALLE'S "VIVA MARIA"** with PAULETTE DUBOST · GREGOR VON REZZORI · POLDO BENDANDI CLAUDIO BROOK · CARLOS LOPEZ MOCTEZUMA · JONATHAN EDEN and **GEORGE HAMILTON**

Director of Photography HENRI DECAE · Original Music Composed by GEORGES DELERUE · Color Consultant and Costume Design GHISLAIN UHRY · Original Screen Play by LOUIS MALLE and JEAN-CLAUDE CARRIERE

Directed by LOUIS MALLE · Produced by OSCAR DANCIGERS and LOUIS MALLE · Filmed in **PANAVISION** **EASTMANCOLOR**

A Franco-Italian Co-Production: Nouvelles Editions de Films – Les Productions Artistes Associes, S.A. (Paris) and Vides Cinematografica (Rome)

Released thru **UNITED ARTISTS** ORIGINAL MOTION PICTURE SCORE AVAILABLE ON UNITED ARTISTS RECORDS

OPEN DAILY 12:45 P.M.
FEA. 1:00, 3:00, 5:10, 7:25, 9:40
PLUS—HERE'S NUNDIE COLOR CARTOON

STARTS **THURSDAY!**

ESQUIRE
OAK LAWN AT LEMMON

PRINTED IN U.S.A.
Form E420 100M 4/64

PAGE 2

EXCHANGE COPY

UNITED ARTISTS CORPORATION
COMPETITIVE BID APPLICATION & CONTRACT FOR

DALLAS
BRANCH

ZONE

RIVA MARIA
PICTURE

1/11/66
DATED

J-1
2-17-66

DIRECTIONS

1. Insert all terms of your bid. No bid will be considered unless the schedule and bid are completely filled out.
2. It is imperative that the PLAY DATE SPACE be filled in so that the Producer can properly appraise this bid. If the exact availability is unknown, an approximate playdate is to be given, or you should specify the maximum number of days after the availability date that the picture will play. We will notify you when this date is set.
3. Execute where indicated below.
4. All bids must be received by 12 NOON 1/17/66
5. Retain last copy and return all other copies in envelope enclosed.

NOTE—Distributor reserves the right to reject all bids received.
In the event that the above picture is awarded to any exhibitor as a result of bids submitted pursuant to this invitation, then the bid which has been accepted will be available for inspection to all who have submitted bona fide bids, which have not been accepted, for a period of 7 days commencing from the date of notification to you that an award has been made.

APPROVED
Follow Up Copy Pulled
COUNTY, TEXAS
Exhibiters Copy Mailed
195
Cursit Posted
Work Completed.

The following SCHEDULE and all written and printed parts thereof are a part of this License, for the above entitled motion picture.

SCHEDULE

Theater ESQUIRE FIRST Run or Availability FEBRUARY 1966

Town and State DALLAS, TEXAS Zone A Seating Capacity

Owner INTERSTATE CIRCUIT, INC. Address MAJESTIC THEATRE BLDG., DALLAS

BID OF EXHIBITOR

THIS IS A COMPETITIVE BID THEREFORE NO ADJUSTMENT OR REVISION OF TERMS WILL BE GRANTED
NO BID WHICH CONTAINS ALTERATIONS OR ERASURES WILL BE CONSIDERED

1. Film Rental 1st week 50-60% Scale; 2nd week 40-60% Scale; 3rd week 30-60% Scale; all other playtime 25-60% Scale. (See scale below)
   Flat, Percentage or Guaranteed Minimum Film Rental (To Be Paid Seven (7) Days In Advance) and percentage
2. Number consecutive days Four (4) to six (6) consecutive weeks playing time.
3. Days of week
4. Actual playdates or length of time, including preferred playing time, if any, after availability picture will be exhibited
   Picture to open in February following "Say Nothing Came In from the Cold".
5. Amount, if any, exhibitor intends to spend on advertising Co-operative advertising campaign is to be mutually agreed upon between distributor and exhibitor.
6. Other terms

25%	27½%	30%	32½%	35%	37½%	40%	42½%	45%	47½%	50%	52½%	55%	57½%	60%
Under 450.	475.	500.	525.	550.	575.	633.	696.	766.	843.	927.	1020.	1122.	1234.	per unit

7. Clearance desired Normal

HEATER CHARGES—DEDUCTIONS: The exhibitor shall include all receipts obtained from the rental of heaters or from heater service charges when computing "gross receipts" and the Exhibitor may deduct the actual receipts obtained from the rental of one (1) heater unit per car PROVIDED that such rental is OPTIONAL with the patron, and further, that such deductions shall not exceed ..... cents per car. The payment for all taxes imposed by rental of heaters or from heater service charges, shall be borne by the Exhibitor.

The Exhibitor agrees to adhere in its advertising and publicity to the instructions issued to the Exhibitor by the Distributor or as set forth in the press book submitted by the Distributor.

IN WITNESS WHEREOF, the Exhibitor has on the 17th day of Jan 19 66, executed this competitive bid application, which upon approval by the Producer and acceptance by the Distributor at its home office in New York City by its affixing hereto the facsimile or perforated or written signature of a person authorized to sign this application and contract, and delivery to the Exhibitor of a duplicate copy thereof, shall constitute a contract of license for the exhibition of this motion picture but only at the theatre and on the dates specified herein and in accordance with the terms and conditions hereof and no deviation from the stipulated terms will be permitted.

Exhibitor INTERSTATE CIRCUIT, INC. L. S.
[illegible] — A Corporation
(Strike out two)

By
Partner — General Manager — Officer
(Strike out two)

Lessee
Owner
Operator
(Strike out two)

ACCEPTED at New York, N. Y.
UNITED ARTISTS CORPORATION
DATE

BY

JJ:c

END OF CONTRACT

BEGINNING OF THE

CONTRACT OF LICENSE

The following is the contract of license for each picture for which the application of the Exhibitor is accepted by the Distributor at its home office in New York City:

LICENSE—The DISTRIBUTOR grants and the EXHIBITOR accepts a limited license under copyright to exhibit the same publicly at only the theatre and on only the date or dates specified in the Schedule hereof or otherwise set in accordance with the terms hereof and confirmed in writing by Distributor. Unless otherwise expressly permitted in the Schedule, said license includes no right to exhibit at any time or place other than on the date or dates at the designated theatre as above provided and confirmed by Distributor.

PAYMENT—

The Exhibitor agrees to pay to the Distributor at the city in which is located the Exchange from which Exhibitor is served, the license fee or the guaranteed Minimum Film Rental set forth in the Schedule at least 7 days in advance of the fixed date of the exhibition of each picture.

If any part of the license fee is a percentage of the Exhibitor's gross receipts, Exhibitor agrees to make payment thereof to Distributor at the end of each day's exhibition, and at the same time furnish the Distributor with a correct itemized statement of the gross receipts of said theatre on forms furnished (at the option of Distributor) by Distributor, with all requested information completed, signed by the Exhibitor or his manager, cashier, or treasurer. As to each such picture, the Exhibitor agrees to account to Distributor for each person admitted (except free admissions when approved by Distributor) on the basis of the respective admission prices in effect at the theatre at each performance during the entire engagement of the picture. Admission taxes collected may be deducted before computing Distributor's share. As to each picture licensed upon a percentage basis, the Exhibitor agrees that at all times during the engagement of said picture only serial numbered tickets will be used, with a separate and distinct series for each established price; that the tickets of each series will be issued consecutively in the order of the serial numbers of the particular series; that a separate such ticket will be issued to each person admitted, and that not more than one series of tickets of each price class will be used at any one time. As an essential and vital condition of this entire agreement, the Exhibitor agrees that an authorized representative of the Distributor shall, at all times during each exhibition, have access to all parts of the theatre including the box office and to all other places, persons and devices concerned with the sale and collection of admissions and admission tickets and the right to examine the admission tickets, the Exhibitor's books and records relating to the gross receipts, and an authorized representative of the Distributor shall have the right to "audit" at any time thereafter all Exhibitor's books and records pertaining to or useful in determining the correct and accurate receipts in which Distributor is entitled to share, the ticket sales and admissions, and to make record of the numbers of the admission tickets on sale during the course of said exhibition. In the event that an audit or checking reveals that the Exhibitor has underreported its Admission Receipts or has misrepresented its operating expenses, the Exhibitor agrees, in addition to recomputing and making immediate payment of the film rental due based on the actual admission receipts and the true operating expenses, to pay all costs and expenses incurred by Distributor for the audit, checking and any attorneys' fees incurred by Distributor in connection therewith. Exhibitor agrees that it will not cause, permit or suffer any interference with the checker. In the performance of any of his duties in checking. Should the Exhibitor breach the provisions of this article in any respect, Distributor may at its option terminate this license forthwith, and the Exhibitor agrees immediately upon notice of such termination to cease any further exhibition of the picture, and at the same time to deliver the print to the Distributor, and any continued exhibition of said motion picture by the Exhibitor after such notice of termination shall be without right and without license. The Distributor, or its authorized representative, shall have access, after the receipt by the Distributor of each final box office statement, to all of the Exhibitor's books and records for the purpose of verifying such box office statement. Distributor agrees that any information obtained pursuant to the provisions of this clause will be deemed confidential business information. Exhibitor agrees to segregate the Distributor's share of the gross receipts as such admission moneys are paid into the box office and not to intermingle such funds with any other moneys and to hold such percentage share of the gross receipts in trust for the Distributor and to pay over such trust funds daily, as in this paragraph provided, it being intended that all moneys accruing to Distributor as its share of the Admission Receipts shall, until remitted or turned over to Distributor, be held by Exhibitor in trust for Distributor. Exhibitor agrees to be liable and hereby indemnifies Distributor against any loss, whether through theft, robbery or burglary, of any money accruing to Distributor.

DAMAGES FOR BREACH—

Default. If Exhibitor violates any of the provisions of this agreement or becomes insolvent or is adjudicated bankrupt or executes an assignment for creditors or a receiver is appointed for any of Exhibitor's property, or if Exhibitor violates any of the provisions of any other exhibition contract(s) heretofore or hereafter made with Distributor, then, in any of said events Distributor may either (1) terminate this contract or (2) terminate this and such other contracts or (3) suspend delivery of further pictures hereunder (and, if Distributor elects, also under any or all such other contracts) pending compliance by Exhibitor. Said remedies shall be in addition to and without prejudice to any right or remedy Distributor has at law, in equity, or provided for elsewhere in this agreement on account of any such violation or breach. If Exhibitor fails or refuses to pay any license fee due under this or any such other contract, Distributor may declare such failure or refusal a breach of this entire contract or a breach of this and such other contract (s), and Distributor shall then have the right to recover as damages therefor an amount payable as license fees of all pictures so cancelled and not hitherto exhibited and paid for. If Distributor willfully fails or refuses to deliver any picture licensed hereunder the amount of damages which may be claimed or awarded therefor in any litigation or arbitration shall in no event exceed the license fee herein provided therefor. As to any picture licensed, or designated on guarantee against a percentage participation, said damage shall not exceed such guarantee, and, as to a picture on straight percentage, damage may not exceed an amount to be determined as provided under "if licensed upon a percentage basis."

If Licensed Upon a Percentage Basis. If payment hereunder of the license fee of any such motion picture shall be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit any such motion picture as herein provided, the Exhibitor shall pay to the Distributor for each day that the Exhibitor fails or refuses to exhibit any such motion picture, a sum equal to such percentage of the average daily gross receipts in such theatre during the period of thirty (30) operating days to wit the sixteen (16) operating days immediately prior to and the fourteen (14) days immediately after but including the date of the mailing of the notice of availability for the specific unplayed picture as set forth in FIXING EXHIBITION DATES Subdivision (2) and in addition any fixed sums payable hereunder in respect thereto. If the Exhibitor shall exhibit any such motion picture for less than the full number of days provided for in this license or less than the full number of days confirmed by the Distributor, the Exhibitor shall pay for each day of the week, Monday thru Friday, of which he fails to exhibit the picture, the Distributor's percentage of a sum equal to Seventy-Five (75%) percent of the gross and/or the sum of One Hundred Fifty (150%) percent for each Sunday or Holiday, and/or the sum of Two Hundred Twenty-Five (22.5%) percent for each Saturday, of the gross receipts of said picture of the last day of exhibition at said theatre. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor, signed by the exhibitor or his manager and countersigned by cashier or treasurer.

"Gross receipts" for the purpose of computing the percentage license fee, shall consist of all moneys (exclusive only of admission taxes required by law to be collected from the patrons) received for the privilege of entry to the theatre premises on each exhibition date hereunder, regardless of when or where paid; and unless otherwise expressly authorized in the Schedule hereof or in writing by the Distributor, shall include all moneys so collected from the patrons for the availability, inside or outside of the theatre premises, of any services, facilities, or of any allowances, discounts or rebates in connection therewith, or of any other entertainment on the program with the percentage picture.

FIXING EXHIBITION DATES—

The exhibition date or dates of each motion picture, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon in writing, shall be as follows:

(1) The Distributor agrees to mail to the Exhibitor a notice in writing of the date when a motion picture is available for exhibition by the Exhibitor. Such date is referred to as the available date. Such notice shall be mailed to the Exhibitor at least fifteen (15) days prior to the available date therein specified.

(2) Within fourteen (14) days after the mailing of such notice Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to Distributor written notice of the date or dates so selected, for the theatre set forth in the Schedule.

(3) If acceptable to Distributor, the Distributor shall confirm in writing such date or dates for the designated theatre. If the date shall not be acceptable to Distributor or shall have been assigned to another exhibitor, or if no print shall be available for such date, Exhibitor shall forthwith select another date falling within said period. If the exhibitor fails to select a playdate as herein specified, Distributor may designate the same for a theatre specified in the Schedule by mailed notice.

(4) No notice of availability sent after an Exhibitor's breach shall be construed as or constitute a waiver of any breach of this contract or of any other contract existing at the time the notice of availability is sent.

(5) The Exhibitor agrees to exhibit each motion picture for the license of which it contracts with the Distributor in the sequence of the notice of availability given the Exhibitor, and that this order of exhibition shall be of the essence of the license agreements for the various motion pictures entered into by the parties hereto.

DELIVERY OF PRINTS—

Delivery to the Exhibitor or the Exhibitor's authorize agent by delivery at the Distributor's Exchange, or to a common carrier, or the United States Postal authorities, shall constitute delivery for all purposes under the terms of this agreement.

LOSS AND DAMAGE TO PRINTS—

The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange of each linear foot of any print, lost, stolen, destroyed or injured in any way in the interval between the delivery to and return thereof by the Exhibitor. Such payment however, shall not transfer title to or any interest in any such print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft, or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent Exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof, shall have Telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

RETURN OF PRINTS BY EXHIBITOR—

(a) After the completion of each exhibition hereunder, the Exhibitor agrees promptly to return the prints to the Distributor's Exchange, or as instructed in writing by the Distributor, either to Deliver them to a carrier designated by the Distributor, or to deliver such print to another Exhibitor, and in any case to pay all transportation charges therefor adequately valued and insured.

(b) In the event the Exhibitor is obligated by such written instructions to deliver any such print to another exhibitor, and fails so to do, and should the Distributor suffer damages thereby, the Exhibitor agrees to pay any and all such damages.

CUTTING OR ALTERATION OF PRINTS—

The Exhibitor shall exhibit each picture in its entirety and shall not copy, duplicate, subtent or part with possession of any print thereof, nor shall the Exhibitor cut or alter the same excepting to make necessary repairs thereto, and the Exhibitor shall return each print in the same condition as received, reasonable wear only excepted.

ADVERTISING PRIOR TO FIRST RUN—

If the Exhibitor is granted hereunder a second or subsequent run, the Exhibitor agrees not to advertise any picture to be delivered hereunder except by means of advertisements inside the said theatre not intended for removal therefrom by the public, prior to the exhibition of any such picture by any other Exhibitor having the right to the first or prior run thereof. In the event of any violation of this clause the Exhibitor agrees to pay to the Distributor a sum equal to the damage, if any, so caused such other Exhibitor, and the Distributor may, at its option, terminate the license granted hereunder for that picture to be delivered by the Distributor. The Distributor, however, shall not be liable for any breach of the provisions of this article by any other exhibitor.

C. O. D. SHIPMENTS—

Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print of any motion picture contracted for hereunder, payment of all amounts then due Distributor, or due any affiliate or subsidiary of Distributor, for the right to exhibit any motion picture of Distributor or any of its affiliates or subsidiaries in any theatre owned or operated by Exhibitor, and Distributor may require payment of such sums by C.O.D. shipments.

TAXES—

The Exhibitor agrees to pay to the Distributor an amount equal to the aggregate of all taxes now in effect or hereafter imposed or based upon the license, delivery, exhibition, possession or use by the Exhibitor of the prints of the motion pictures licensed hereunder, or upon the grant of such license or the exercise thereof, or measured by the license fees, however determined, paid or payable by the Exhibitor to the Distributor under this license. The word "tax" as used in this paragraph shall be deemed to include, but shall not be limited to, taxes, fees, assessments, charges, imposts, levies, excises, whether denominated a sales, gross income, gross receipts, personal property, storage, use consumption, license, compensating, excise or privilege tax. If the amount of any tax payable under this clause cannot be exactly determined, the Distributor may estimate the amount of such tax and the Exhibitor shall pay to the Distributor such estimated amount upon demand therefor; provided, however, that upon the determination of the exact amount of any such tax the Exhibitor shall be entitled to repayment of or credit for any excess amount paid. Upon the failure or refusal of the Exhibitor to pay any tax or any part the reof, the Distributor shall have all the remedies herein provided for the collection of license fees as well as all other remedies provided by law.

PASSES—

It is mutually agreed that the Exhibitor will not issue more than 2% of the total number of admission in passes throughout the entire license period. If the aggregate number of passes issued by the Exhibitor exceeds the agreed upon percentage, then the Exhibitor when computing the film rental payable hereunder shall account for each such additional pass upon the basis that a maximum adult admission price had been received; except where there is an express prohibition against any passes.

VERBAL PROMISES; CHANGES MUST BE IN WRITING—

This license agreement is complete, and all promises, representation, understandings and agreements in reference thereto have been expressed herein. All prior negotiations and agreements are merged herein. The provisions hereof, including, but not limited to, the film rental provisions, shall not be affected by any custom and usage, alleged or actual. No change, modification or assignment hereof shall be binding upon the Distributor unless in writing signed by any person duly authorized by the Distributor in its main office in New York City.

CONTINUED ON PAGE 2

[fol. 179]

[fol. 180]

IN THE 44TH JUDICIAL DISTRICT COURT

IN AND FOR DALLAS COUNTY, TEXAS

INTERVENOR'S EXHIBIT 2

No. 66-1280-B

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC. and UNITED ARTISTS CORPORATION, Defendants.

AFFIDAVIT

STATE OF TEXAS
COUNTY OF DALLAS

RUSSELL L. BRENTLINGER, being duly sworn, deposes and states:

1. I am the Branch Manager of the Dallas office of United Artists Corporation. The Dallas office is responsible for distributing films for United Artists Corporation generally in the States of Texas and Oklahoma.

2. United Artists Corporation has the exclusive domestic distribution rights of the motion picture "Viva Maria" and in addition has a share in the producer's profits from that movie, as distinguished from the distribution profits from the same.

3. As Branch Manager, I am familiar on a day to day basis with the national performance of all pictures distributed by United Artists Corporation. I know and make it a point to keep track of the critics' and the public's reception of the films we distribute.

[fol. 181] 4. "Viva Maria" has been exhibited in premiers in Los Angeles, California, and in New York City. In the former city it premiered on December 20, 1965, in the Bruin and Vogue theaters. In the latter city, it premiered in the Astor and the Plaza theaters on December 18, 1965. Concurrently with the opening in Dallas, Texas, the picture "Viva Maria" is now having its national release and is opening in numerous cities, for the first time, all over the United States.

5. The movie "Viva Maria" had an exceedingly good reception at its premiers in Los Angeles and New York, both by the public and the critics, as evidenced by the representative reviews from the following publications on the dates indicated: the New York Times on December 20, 1965, the New York Daily News on December 20, 1965, the New York Post on December 20, 1965, and Variety on December 8, 1965. A true and correct copy of each of these reviews is attached hereto and incorporated herein by reference for all purposes the same as if fully set out herein. The title and date of the respective publications are correctly stated in the lefthand corner of the reproductions of the said reviews so attached and incorporated herein by reference.

/s/ RUSSELL L. BRENTLINGER
RUSSELL L. BRENTLINGER

SUBSCRIBED and SWORN TO before me, a Notary Public in and for said County and State, this 18th day of February, 1966.

/s/ MARGARET L. WARNER
Notary Public in and for
Dallas County, Texas.

[Seal]
My commission expires June 1, 1967.

MARGARET L. WARNER

(See opposite) ☞

N.Y. TIMES
12-20-65

The Screen: 'Viva Maria' Opens Here

Bardot-Moreau Movie Recalls Road Pictures

By BOSLEY CROWTHER

WHO would ever have expected to see Brigitte Bardot and Jeanne Moreau, the two most formi-DA-ble female figures now disporting in French films, caught up in the sort of wild adventures that used to engage Bing Crosby and Bob Hope in one of the boys' outrageous old "Road" films. You might have imagined the ladies to be too serious, too dignified, too concerned about the possible damage that might be done to their valuable physiques.

Yet here they are, bouncing and tumbling through just some such crazy goings-on in Louis Malle's "Viva Maria," which opened Saturday night at the Astor and the Plaza, with Miss Bardot graciously on hand to give ample demonstration that no damage had been done, at least, to hers.

o

What they are loosely caught up in—and loosely is as good a word to convey a sense of the sheer abandon of this picture as any of which I can think—is a farcical fabrication of a revolution in Mexico about the time Pancho Villa was touring his melodrama there.

As a couple of song-and-dance artistes in a tiny carnival that moves around the country in several wildly careening horse-drawn vans, the ladies—Maria & Maria—are doing all right with their striptease until one of them (Miss Moreau) falls in love with a somber revolutionist, played by George Hamilton. Then suddenly the focus of their interest and that of their carnival troupe is, first, the liberation of the leader and then the carrying on of his cause, which is the overthrow of a rich villain named Rodriguez, after the leader has been killed.

At least, that is more or less the pattern of events as I call them to mind out of the jumble of random recollections of crazy business that races through my head. But the plot doesn't really matter too much, for it's quite clear that Mr. Malle was more interested in his slapstick inventions than in where they went or what they might remotely prove.

He was interested in setting up Miss Bardot as an innocent trained as a child to plant bombs and touch off explosions for a father who liked to see things blow up. (You can, if you wish, find some significance in this, with respect to Miss Bardot.) He was interested in showing the development of an artless, impromptu striptease, invented by Miss Bardot when she first joins the act with Miss Moreau.

He was interested in Mack Sennett chases and the throwing of incendiary bombs and the pulling of tricks by a magician and the beauty of the Mexican countryside, which is handsomely caught in color in this picture. And it appears that he was also interested in making as much light-hearted fun of the clergy in his whipped-up insurrection as he makes of the villainous landowner.

As with most pictures put together in this studiedly spontaneous way, there are sequences and scenes that are very funny, more that are labored and dull. Flashes of wit, sight and verbal, are sprinkled amid stretches of sodden farce. Every so often, something happens that startles a happy guffaw. Minutes pass when we are conscious of nothing but the strain of Mr. Malle.

o

As a consequence, the acting opportunities for Miss Bardot and Miss Moreau are limited to those few, infrequent incidents in which they can show a shocked expression or flounce a hip. For the most part, they are amusing mainly because of the incongruity of their being here, acting farce with almost as much insignificance as anonymous Mack Sennett bathing girls.

Mr. Hamilton has virtually nothing to do, except hold up a beam that is placed across his shoulders in the prison as a torture device and becomes a quite obvious inconvenience when Miss Moreau comes to him to make love. Others in the roles of carnival performers and Mexican characters are up to their jobs.

For no particular reason or advantage, the language spoken is French—except for one man who occasionally blurts out English. The film is translated in subtitles.

Jeanne Moreau, left, and Brigitte Bardot in the new film

The Cast

VIVA MARIA, original screenplay by Louis Malle and Jean-Claude Carriere; directed by Mr. Malle and produced by him and Oscar Dancigers for United Artists release. At the Astor, Broadway at 45th Street, and the Plaza, 58th Street east of Madison Avenue. Running time: 125 minutes.

Maria I	Jeanne Moreau
Maria II	Brigitte Bardot
Flores	George Hamilton
Madame Diogene	Paulette Dubost
Diogene	Gregor von Rezzori
Werther	Poldo Bendani
Rodolfo	Claudio Brook
Rodriguez	Carlos Lopez Moncizezuma
Father Superior	Francisco Reiguera

N.Y. DAILY NEWS
7-2-69

MOVIES

Bardot and Moreau —2 Zanies With Zing

Brigitte Bardot (l.) and Jeanne Moreau.

By WANDA HALE

★ ★ ★ ★

With Gallic humor and Hollywood know-how, obtained from keen observation, Louis Malle has made le western fou—meaning a mad, zany, crazy western. "Viva Maria" is its name, co-starring Brigitte Bardot and Jean Moreau as a song and dance team with a travelling circus who become leaders in a Central-American revolution.

Leave your incredulity at home before going to either the Astor or the Plaza Theatre to see this outrageously funny spoof on our outdoor action films. English titles are helpful if you don't understand the French language but the action speaks for itself, eloquently. As the French love our westerns, M. Malle will most likely win the legion d'honneur for outdoing Hollywood at its own game.

MALLE PHOTOGRAPHED his petticoat western in Mexico, Panavision, Eastmancolor, a first for a French director. Stunning scenic backgrounds may get the cameraman a French prize. In the vast undertaking, Malle keeps the story by Jean-Claude Carriere and himself well under control. Every sequence reflects a lively, vivid imagination in this, his first attempt to make a comedy of epic proportions.

As for the stars, Bardot the sex kitten, and Moreau, fine dramatic actress, are both delightful in comedy roles. Moreau is more sedate in her performance but neither overdoes it. Brigitte proves that she is an accomplished comedienne with clothes on. Except for their strip-tease act together, both are fully clothed in dresses of the period, early 20th century. Both girls are named Maria, which adds to the confusion of most characters and the merriment of the film.

Maria I (Moreau) and Maria II (Bardot) are forced into the shootingest revolution in film history by one Flores, played by George Hamilton, who's a failure as an insurrectionist.

ON HIS DEATHBED, Flores makes a request, pleading with the woman he loves, Maria I, to carry on the fight against the rich, brutal despots of San Miguel. Giving her promise, Maria I rallies the lethargic peons into a wildly enthusiastic fighting force.

Teaching peasants the art of guerrilla warfare is Maria II, who has learned revolutionary tactics from her Irish father, an anarchist who was chased out of both Ireland and England and who was killed in Central America.

AN EXPERT with dynamite, guns and small cannon, she leads the rebels in actual warfare. No wonder that the tyrants are wiped out to the last man!

The stars, George Hamilton, and a few French players are assisted by Mexican actors of note and thousands, it seems, of extras. Malle has directed his actors and action with tongue in cheek, a genius for comic invention, an exaggeration of what he has seen in American westerns and a little bit of Ian Fleming thrown in.

Where does he go from here? Not, I hope, to conceal his marvelous sense of humor in those way-out dramas of sordid life. Even if he hasn't directed a masterpiece, Louis Malle has made a fun picture that anybody with a broad sense of humor can enjoy to the fullest.

"Viva Maria," a United Artists release in Panavision and Eastmancolor. Produced by Louis Malle and Oscar Dancigers and directed by Malle from a screenplay by Malle and Jean-Claude Carriere. Presented at the Astor and Plaza Theatres. Running time: 1 hour, 59 minutes. With English titles.

THE CAST:

Maria II	Brigitte Bardot
Maria I	Jeanne Moreau
Flores	George Hamilton
Diogene	Gregor Von Rezzori
Madame Diogene	Paulette Dubost
Rodolfo	Claudio Brooks
Rodriguez	Carlos Lopez Moctezuma
Werther	Poldo Benandi

N.Y. POST
12-20-65

Reviewing Stand

By ARCHER WINSTEN

'Viva Maria' at the Astor & Plaza

You can suspect that French director Louis Malle had a ball writing, directing and making "Viva Maria," now at the Astor and Plaza theaters. One hopes so because someone should have all that intended fun. Not too many in the audience will.

'Viva Maria'

A United Artists release. Produced by Oscar Dancigers and Louis Malle. Directed by Louis Malle. Screenplay by Malle and Jean-claude Carriere. The cast Jeanne Moreau, Brigitte Bardot, Paulette Dubost, Gregor Von Bozzori, Poldo Bendandi, Claudio Brook, Carlos Lopez Moctezuma, Jonathan Eden and George Hamilton. 119 minutes.

The reasons for this very mixed salad of fresh, sometimes fanciful, sometimes flat-on-its-face would-be comedy-satire-burlesque can be traced directly to the variety, scatter-gun technique. Young Mr. Malle is now beginning to know too much about his medium. He wants to do everything at once.

He has brought together two of France's brightest women stars, Jeanne Moreau, the actress, and Brigitte Bardot, the onetime sex symbol from France and still an international personage. He has transported his company to Mexico, taken the trouble to extract beautiful costumes from Ghislain Uhry, and matched that with the precaution of using a splendid photographer, Henri Decae. The music by the great Georges Delerue is from the top drawer.

Unfortunately Malle has employed himself as writer along with Jean-Claude Carriere. They create like a pair of college *terrible children* thumbing their nose at church, state, banks and the oppressive rich in some mythical South-of-the-Border Hispanic country.

They have seen to many American Westerns, burlesques of Westerns, and Mack Sennett comedies. They are so sophisticated themselves that they can have touches of surrealism, and Tarzan swinging through the trees (really Brigitte), and guns that shoot around corners through a bent barrell.

Nice Birth of Tease

They can document the invention of the striptease—it's rather nice as Jeanne and Brigitte do it, especially in those beautiful clothes—and they do not blink at a girl's vigorous introduction to sex.

There is one extremely funny and, as far as this observer is cornered, original gag. A group of fighters mount horses and gallop off, leaving behind one furious rider who whips his mount to no avail. He is on a statue.

At the beginning of the picture Brigitte has been extensively introduced as the bomb-detonating infant of an Irish revolutionary. This is how she becomes so skillful.

And Jeanne is an actress with a travelling French circus which has a strongman and a magician and some acrobats.

George Hamilton shows up as an intense, bearded, doomed young leader of oppressed people. He is also catnip to Jeanne.

The picture never stops bombing along at high action, mortality and amatory rates. Everyone, good guys and bad guys alike, has romantic intentions.

But you can't take it seriously because obviously the picture makers have to be kidding. But the exaggerations, and the satire, and struggles of rich with poor don't make much of a point either. You suspect that Malle may be throwing in a bit of surrealism because he has a little of that to spare, and that something you could call antique expressionism also makes an occasional splash.

The main point is that a lot of it cancels out rather than reinforces the rest of it. In a very real sense they get nowhere in a rather long journey, and that means a waste of some spectacular talents. Despite all the fierce action, signifying nothing much, boredom settles over this beautiful shot-ridden countryside.

Louis Malle, who has tried his talents in so many directions, here finds another that doesn't suit him. Brigitte and Jeanne and United Artists may be able to rescue it by sheer star-and fire-power, but if they do, it won't be without suffering on the part of people who have been had.

[fol. 184]

153

VARIETY

12-8-65

Viva Maria
(FRENCH-COLOR-SONGS)

Bardot - Moreau - Hamilton names in lively comedy. Good prospects.

Paris, Dec. 7.

United Artists release of NEF-Artistes Associes-Oscar Dancigers-Vides Film production. Stars Brigitte Bardot, Jeanne Moreau; features George Hamilton, Claudio Brooks, Carlos Lopez Moctezuma, Gregor Von Rezzori, Paulette Dubost, Luis Rizo. Directed by Louis Malle. Screenplay, Jean-Claude Carriere, Malle; camera (Eastmancolor), Henri Decae; editor, Kanout Peltier, Suzanne Baron; music, Georges Delerue. Previewed in Paris. Running Time, 120 MINS.

Maria I ..... Jeanne Moreau
Maria II ..... Brigitte Bardot
Flores ..... George Hamilton
Rodolfo ..... Claudio Brooks
Magician ..... Gregor Von Rezzori
Rodriguez ... Carlos Lopez Moctezuma
Strongman ..... Luis Rizo

Big Bertha pic looks geared for big business internationally with B.B. (Brigitte Bardot) in her best form since "And God Created Woman," and brilliantly matched by Jeanne Moreau. They are backed by a rollicking, comic adventure opus impeccably brought off by director Louis Malle. The American name is George Hamilton. Film's dialog is in English.

Here is a film that measure up to its advance publicity. It has the wit, scope and color for both arty and playoff or regular firstrun chances. It strikes the right note of larger-than-life adventure, uses sex in a delicious, rather than leering or over-exploited manner and deftly pays homage to the Yank films of this kind in its stable, good natured succession of gags, leavened with some frisky but never blue French humor.

Here is Miss Bardot as the daughter of a life-long anarchist who has spent her life blowing up bridges and police stations. She finds herself hunted in some Latino country in 1910 when she has to blow up papa and a bridge. She is taken up by Jeanne Moreau, a dancer in a traveling music hall cum circus. The two team up.

There follow some knowing takeoffs on the songs of the era with Bardot unwittingly seeming to invent the striptease when her skirt falls off at one show. The tone of this allows big production suddenly to be worked into a moth-eaten bucolic theatre. One bit has them stripping with the last vestments suddenly having a cut.

The fine scripting takes advantage of the land, color, Panavision and outdoor shooting in Mexico as the tale gets the circus involved in a local revolution. Also neatly imbedded are the characters of the femmes, both named Maria. Bardot is an innocent who suddenly discovers love; approves of it, and just uses it like a pure little animal, an epitome of her sex-kitten shenanigans. Moreau is the more knowing and wry one who is still the more romantic and falls for a handsome revolutionary. She takes up his cause after his death.

Some big scale fight episodes are brought off with the right romantic violence and invention. A pigeon that drops grenades, Bardot handling a machine gun or swinging through the trees, Tarzan-like, to wipe out a cannon. The circus performers employ their acrobatic skill also in the fights. The gags spring naturally and are thus more effective.

None of the frenzied cutting, overloaded and forced comedics and leering attitudes towards sex get into this pic. It is a classic tale, set in a fresh, witty and zesty new mold. Production manages to keep up the pace, and rarely sags. The only love scene, of Moreau entering the prison of her hero, with the circus strongman bending the bars, is done with the right romantic flavor.

Color is right, supporting cast very strong and the comedy routines a delight. A local churchman tries to use old Inquisition torture tools on the girls but relents and apologizes when the things break down. As he puts it: "They have not been used in a long time."

Big scale extra scenes and mob fighting are also spectacular with bright gags interlarded. When a bank is blown up it rains gold coins. Exploding a statue of the tyrant has the monument falling among seated people and then a man frantically trying to ride the horse part.

It adds up to a bouncy, broad adventure opus that pays homage to its predecessors yet does not ape them. There should be a big worldwide career for this one in subtitled or dubbed forms. It can play arty and specialized spots easily too. The entertainment knowhow and comedy mix well to give this high b.o. potential.

Mosk.

[fol. 185]

[fol. 186]

No. 66-1280-B

IN THE 44TH JUDICIAL DISTRICT COURT IN AND FOR DALLAS COUNTY, TEXAS

CITY OF DALLAS, Plaintiff,

v.

INTERSTATE CIRCUIT, INC., Defendant,

UNITED ARTISTS CORPORATION, Intervenor.

TEMPORARY INJUNCTION—Entered February 17, 1966

On this the 17th day of February A. D. 1966, came on to be heard the above entitled and numbered cause wherein the City of Dallas, as Plaintiff, seeks a temporary injunction against the Interstate Circuit, Inc., as Defendant, and United Artists Corporation, as Intervenor, have subjected itself to the jurisdiction of thie Court, all parties having been represented by attorneys and in person, and having announced ready for trial, the Court proceeded to examine the pleadings, hear the testimony and the argument of counsel, and after having fully considered the same, together with the viewing in person of the motion picture "Viva Maria", is of the opinion and hereby finds that the City of Dallas, as Plaintiff, is entitled to a temporary injunction.

It is therefore the Order, Judgment and Decree of this Court, and the Court hereby grants a temporary injunction against Interstate Circuit, Inc., as Defendant, and United Artists Corporation, as Intervenor, enjoining them from exhibiting said motion picture "Viva Maria" in violation of Ordinance No. 11284, or without advertising by

Media originating within or stationary within the City of Dallas and exhibiting said film as "not suitable for young persons", and that this temporary injunction shall be effective pending a final hearing for a permanent injunction herein.

The Exceptions of the Defendant and Intervenor in the [fol. 187] pleadings are hereby specifically overruled.

The Defendant in open court, requested the Court to file its Findings of Fact and Conclusions of Law and this request is specifically denied.

The Defendant and Intervenor in open court gave notice of appeal to the Fifth Supreme Judicial District of Texas Sitting at Dallas, Texas.

Entered this the 18th day of February A. D. 1966.

A. R. Stout, Judge Presiding.

[File endorsement omitted]

[fol. 187a] Clerk's Certificates to foregoing transcript [omitted in printing].

[fol. 188]

IN THE COURT OF CIVIL APPEALS FOR THE
FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT DALLAS

18071

No. 16,773

INTERSTATE CIRCUIT, INC., et al, Appellants,

vs.

CITY OF DALLAS, Appellee.

MOTION TO ADVANCE ON THE DOCKET—
Filed March 22, 1966

To the Honorable Judge of Said Court:

Now comes the Appellant in the above styled and numbered cause, and moves the Court to advance this case for immediate submission.

As grounds therefor the Appellant would respectfully show the following:

I.

The Appellant's Brief herein was filed on Saturday, March 19, 1966, and on that same day at approximately 10:25 o'clock A.M., a copy of the Brief was delivered to the Honorable N. Alex Bickley, City Attorney.

II.

The appeal of this case involves the right of the City of Dallas to restrict the exhibition of the motion picture, "Viva Maria", under its Ordinance No. 11284. The City of Dallas having classified the picture as "not suitable for

[File endorsement omitted]

young persons", an appeal was taken from a temporary injunction of the 101st District Court, enjoining the Appellant from advertising the picture as "suitable for young persons".

[fol. 189] III.

Ordinance No. 11284, Section 46A-7(3), provides:

> "(3) If the injunction is granted by the trial court and the defendant-exhibitor appeals to the Court of Civil Appeals, the Board shall waive any and all statutory notices and times as provided for in the Texas State Statutes and Texas Rules of Civil Procedure, and shall within five (5) days after receiving a copy of appealing exhibitor's brief, file its reply brief, if required, and be prepared to submit the case upon oral submission or take any other reasonable action requested by the appealing exhibitor to expedite the submission of the case to the Court of Civil Appeals, and shall upon request of the appealing exhibitor, jointly with such exhibitor, request the Court of Civil Appeals to advance the cause upon the docket and to give it a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters."

Under the terms of the Ordinance, the City is obligated to join in this Motion to Advance on the Docket, and get a preferential setting the same as is afforded an appeal from a temporary injunction or other preferential matters.

IV.

A copy of this Motion has been submitted to the City of Dallas prior to filing and if the space provided for their signature is endorsed by the City Attorney, then it will be considered a joint Motion of both parties. If it is not endorsed, then the Court is asked to advance the submission of the case because the Ordinance requires it even

though the City did not concur. The Brief of the City of Dallas should be filed according to the terms of the Ordinance by Thursday, March 24, 1966. This being motion day under the practice of this Court, this Motion is filed now so that when the City's Brief is filed, there will be no delays in making the request for advancement.

[fol. 190] V.

This Court is respectfully requested to advance this case to the earliest time practicable, giving particular consideration to the importance of the matter and the precedent which will be established here for other cases of this type now pending in the trial courts of Dallas County, and other cases which will probably be filed in the future.

VI.

The Appellant here is ready to argue this case at the earliest time that the Court will set the same for submission, whether on a regular day of the Court's business or at a special session.

Wherefore, Premises Considered, Appellant prays that this case be advanced on the docket and set for submission on Friday, March 25, 1966, and that an opinion on the matter be rendered at the earliest time possible.

Respectfully submitted,

Tobolowsky, Hartt, Schlinger & Blalock, By Grover Hartt, Jr., 3525 Southland Center, Dallas, Texas 75201, RI 2-9205, Attorneys for Appellant.

The City of Dallas joins in the foregoing Motion to Advance the case on the docket of the Court.

Ted P. MacMaster, City Attorney

[fol. 191] Proof of service [omitted in printing].

[fol. 192] Clerk's Certificate to foregoing paper [omitted in printing].

[fol. 193]

IN THE COURT OF CIVIL APPEALS
FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

18071
16773

INTERSTATE CIRCUIT, INC. et al.,

vs.

CITY OF DALLAS

ORDER GRANTING MOTION TO ADVANCE—March 24, 1966

This day came on to be heard the motion of appellants to advance submission of this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be granted and oral argument is set for Monday, March 28, 1966.

IN THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

18072
16773

INTERSTATE CIRCUIT, INC. et al.,

vs.

CITY OF DALLAS

ORDER GRANTING MOTION TO EXHIBIT THE MOTION PICTURE—March 24, 1966

This day came on to be heard the motion of appellants for permission to exhibit the motion picture, "Viva Maria" involved in this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be granted, and that the motion picture in question be shown at 9:00 o'clock a.m., Monday, March 28, 1966.

[fol. 194]

IN THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS, DALLAS

From a District Court of Dallas County, Texas

No. 16,773

INTERSTATE CIRCUIT, INC., et al., Appellants,

vs.

CITY OF DALLAS, Appellee.

OPINION—APRIL 5, 1966

On February 14, 1966 the City of Dallas, appellee, filed suit against Interstate Circuit, Inc., appellant, an exhibitor of commercial motion pictures, seeking temporary and permanent injunctions restraining said appellant (1) from exhibiting the film "Viva Maria" without advertising the film as "not suitable for young persons" and (2) from violating Ordinance No. 11284, as amended, by exhibiting any film contrary to the provisions of the Ordinance.

On February 16, 1966 United Artists Corporation, asserting that it is a distributor of motion pictures and is the exclusive owner of distribution rights of the film "Viva Maria", intervened in opposition to the City.

On February 18, 1966, following a hearing begun the day before, the court granted the City's prayer for a temporary injunction. The City had offered to try the case on its merits at the same time, that is, try the whole case on February 18, 1966, including the application for permanent injunction. This offer was declined by appellants.

Ordinance No. 11284 known as the "Motion Picture Classification Ordinance" was passed by the City Council of the City of Dallas on November 22, 1965. It is too long

to be copied here in its entirety. A summary of its material provisions will be found in a footnote hereto.*

---

*The provisions of the ordinance which are material to this controversy may be summarized as follows:

Sec. 46A-1. Definition of Terms:

(d) A young person is defined as being any person who has not attained his sixteenth birthday.

(f) The standards to be applied in determining whether films shall be classified as "not suitable for young persons are:

(1) Describing or portraying brutality, criminal violence or depravity in such a manner as to be, in the judgment of the Board, likely to incite or encourage crime or delinquency on the part of young persons; or

"(2) Describing or portraying nudity beyond the customary limits of candor in the community, or sexual promiscuity or extramarital or abnormal sexual relations in such a manner as to be, in the judgment of the Board, likely to incite or encourage delinquency or sexual promiscuity on the part of young persons or to appeal to their prurient interest.

"A film shall be considered 'likely to incite or encourage' crime delinquency or sexual promiscuity on the part of young persons, if, in the judgment of the Board, there is a substantial probability that it will create the impression on young persons that such conduct is profitable, desirable, acceptable, respectable, praiseworthy or commonly accepted. A film shall be considered as appealing to 'prurient interest' of young persons, if in the judgment of the Board, its calculated or dominant effect on young persons is substantially to arouse sexual desire. In determining whether a film is 'not suitable for young persons', the Board shall consider the film as a whole, rather than isolated portions, and shall determine whether its harmful effects outweigh artistic or educational values such film may have for young persons."

Sec. 46A-2. Establishment of Board:

This section provides for the creation of the Dallas Motion Picture Classification Board.

Sec. 46A-3. Classification Procedure:

(a) Before exhibiting a film the exhibitor shall file a proposed classification of the film together with a resume of the plot and other information. If the Board approves the exhibitor's proposed classification it shall file its approval. If the Board fails either to file an approved classification or to hold a hearing within five days, the exhibitor's proposed classification shall be considered approved.

[fol. 195] The Ordinance itself has already been the subject of court action. A number of motion picture exhibitors filed suit in the United States District Court for the Northern

---

(b) If the Board is not satisfied with the exhibitor's proposed classification, it may request an exhibition of the film before the Board at the earliest time practicable with due regard to the availability of the film. At the screening before the Board the exhibitor may appear, make such statements and present such evidence as he may desire. The Board shall file its classification within two days after such screening.

(c) Any initial or subsequent exhibitor may file an application for a change in classification. If the prior classification should be changed to "not suitable for young persons" the exhibitor shall have seven days in which to alter his advertising and audience policy.

(d) The Board shall notify all exhibitors of its classification order.

(e) The classification shall be binding on any subsequent exhibitor unless a change in classification is made.

Sec. 46A-4. Offenses:

(a) It shall be unlawful for an exhibitor (1) to exhibit a film which has not been classified; (2) and (3) to exhibit any film classified "not suitable for young persons" under sixteen years of age unless advertising and display media state that the picture is so classified; (4) and (5) knowingly to sell or give to a young person a ticket to a film classified "unsuitable for young persons", or knowingly to permit a young person to view such film.

(d) It shall be a valid defense to any prosecution or other proceeding under the Ordinance that the young person was accompanied by his parent, legal guardian, husband or wife.

Sec. 46A-5. License:

Every exhibitor holding a general motion picture license shall be entitled to issuance of a license to exhibit films classified "not suitable for young persons."

Sec. 46A-6. Revocation or Suspension of License:

Upon complaint being filed that any exhibitor has repeatedly violated the provisions of the Ordinance or has persistently failed to use reasonable diligence to determine whether those seeking admittance to the exhibition of a classified film, the City Council may after notice and hearing suspend for one year the exhibitor's license for the showing of classified pictures.

District of Texas seeking an injunction on the ground that the Ordinance itself is violative of the First and Fourteenth Amendments to the Constitution of the United States. On December 23, 1965 Honorable Sarah T. Hughes, judge of

---

Sec. 46A-7. Judicial Review:

(a) Within two days after filing of the classification by the Board, any exhibitor may file a notice of nonacceptance. If the Board desires to contest the exhibitor's nonacceptance, it shall:

(1) Make application in court within three days for a temporary and permanent injunction.

(2) Have application for temporary injunction set for hearing within five days. If the exhibitor waives notice pursuant to rules of procedure and requests a hearing on the merits on the day set for the hearing on the temporary injunction, the Board shall be required to waive its application for temporary injunction and shall join in such request.

(3) In the event the exhibitor appeals the City shall reply to appellant's brief within five days.

(4) Same in substance as Paragraph (3) if application for writ is made to Supreme Court of Texas by exhibitor.

(5) If trial court denies the Board's application for injunction and Board appeals, Board shall be required to waive all periods of time allowed it by Texas Rules of Civil Procedure, file motion for new trial only if required and then within two days; shall not amend its motion and shall obtain a hearing within five days. Board shall perfect appeal to Court of Civil Appeals including filing of Transcript, Statement of Facts and brief within ten days and shall then file a motion requesting the Court of Civil Appeals to advance the submission of the appeal.

(6) If the Court of Civil Appeals reverses the trial court's injunction order, or if the court refuses to reverse the order, provisions are made similar to those outlined in Paragraph (5) above for the hearing of and decision by the Supreme Court of Texas.

Sec. 46A-10. Exception to State Law:

Nothing in Ordinance shall be construed to regulate public exhibitions pre-empted by Article 527 of Texas Penal Code.

Sec. 46A-11. Severability Clause:

Should any section of the Ordinance be held invalid such holding shall not render invalid any other section, the various sections, etc. being deemed severable for this purpose.

that court, held in effect that, though Section 46A-6 of the Ordinance is unconstitutional, the rest of the Ordinance is not violative of the Constitution. Interstate Circuit, Inc. v. City of Dallas, 249 F.Supp. 19. Appended to the opinion is Appendix A—a reproduction in full of the Ordinance. The above judgment is now pending on appeal before the United States Court of Appeals.

In the appeal now before us Section 46A-6 is not involved. No violation of that section is alleged. The City has not undertaken to suspend appellants' license and does not seek to do so. Therefore, we shall not pass on the constitutionality of Section 46A-6, which under the terms of Section 46A-11 may be treated as severable from the rest of the Ordinance.

[fol. 196] The two appellants have filed separate briefs. Interstate Circuit, Inc. in its first six points on appeal, and United Artists Corporation in all of its ten points, assert that the Ordinance and its application in this case are violative of the First and Fourteenth Amendments to the Constitution of the United States and of Article 1, Sections 8 and 19 of the Constitution of the State of Texas. We do not agree with appellants.

Of course Article 1, Sections 8 and 19 of the Constitution of the State of Texas does not override the Constitution of the United States. Therefore, we shall in the main confine our discussion to the latter Constitution and interpretations thereof, especially with reference to civil suits since this suit does not involve a criminal action, as did the case of Malone v. State of Texas, 339 SW 2d 666.

This is not a totally suppressive ordinance, or one that would totally deny the exhibition to anyone of the picture "Viva Maria" or any other classified film. It does not in any way prohibit the exhibition of any classified picture to adults. It does not even prohibit the exhibition of the picture to any child under the age of sixteen years if ac-

[fol. 197] companied by parent, guardian, husband or wife. It does not prohibit exhibitors from exhibiting pictures classified "not suitable for young persons". It does not

prohibit distributors from distributing a picture so classified. It is in the nature of a classification ordinance, the purpose of which is to regulate the exhibition of classified pictures to children.

By providing for such regulation the Ordinance does not contravene the freedom of speech provisions of our Constitutions. The Supreme Court of the United States has itself suggested that such regulation is proper. We quote from the opinion in Jacobellis v. Ohio, 378 U.S. 184, 12 L.Ed.2d 793, 84 S.Ct. 1676:

> "We recognize the legitimate and indeed exigent interest of States and localities throughout the Nation in preventing the dissemination of material *deemed harmful to children.* But that interest does not justify a total suppression of such material, the effect of which would be to 'reduce the adult population . . . *to reading only what is fit for children.*' Butler v. Michigan, 352 US 380, 383, 1 L ed 2d 412, 414, 77 S Ct 524. State and local authorities might well consider whether their objectives in this area would be better served by laws aimed specifically at preventing distribution of objectionable material to children, rather than at to- [fol. 198] tally prohibiting its dissemination." (Emphasis supplied.)

See also Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 88 L.Ed. 645, and People v. Walton, 161 P.2d 498.

Freedom of speech, mighty bulwark that it is in the preservation of our liberties, is not an absolute right—a truth that is recognized by court decisions. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 86 L.Ed. 1031, 62 S.Ct. 766; and Times Film Corp. v. Chicago, 365 U.S. 43, 5 L.Ed.2d 403, 81 S.Ct. 391. We do not believe that our forefathers in adopting our constitutional provisions or that subsequent interpreters thereof intended to require of children the same discretion, the same mature judgment, or the same responsibility in sex matters that we do of adults. Freedom of speech does not include the right to

teach children that sexual promiscuity is to be approved and accepted as a standard of conduct. And to so hold is not merely to embrace a contemporary local community standard as appellants contend. It involves a contemporary national standard.

This Ordinance avoids constitutional infirmity though it provides for a prior submission of a film under some circumstances. Times Film Corp. v. Chicago, 365 U.S. 43, 5 L.Ed. 2d 403, 81 S.Ct. 391. The process under the terms of the Ordinance takes place under procedural safeguards which require that (1) the burden of proving that the film is not protected rests on the City; (2) the exhibitor is assured by the Ordinance and authoritative judicial construction that within a specified brief period of time the City will either issue a permit or go to court to obtain a regulated showing of the film; (3) any restraint in advance of final adjudication must be for the shortest period of time compatible with sound judicial resolution; and (4) the procedure must assure a prompt final judicial decision. These are the tests laid down by the Supreme Court of the United States in Freedman v. Maryland, 380 U.S. 51, 13 L.Ed. 2d 649, 85 S.Ct. 734 in a *total censorship case.*

The Texas Rules of Civil Procedure grant powers to courts to make prompt judicial decisions. In the district courts Rule 245(c) provides that actions may be placed on the trial calendar "in such other manner as the courts deem expedient" and Rule 330(b), applicable to Dallas courts, provides that "the court may set any case for trial at any time so as to allow the parties reasonable time for preparation."

[fol. 199] In the appellate courts Rule 410, after listing certain types of cases which shall have precedence in Courts of Civil Appeals then states in Section (f): "Such other cases as the court by order or rule, may direct." Rule 497 provides that "Causes may be tried in such order as the justices of the Supreme Court may deem to the best interest and convenience of the parties or their attorneys."

The case now before us was filed in the trial court February 14, 1966, tried February 18, 1966, submitted to this court March 28, 1966 and decided April 5, 1966. Appellants surely have no real basis to complain that the judicial procedural time table has been inadequate to meet the requirements set out in the Freedman case.

Appellants complain that the Ordinance leaves too much to the judgment and discretion of the Board. Appellants apparently overlook the fact that this case was not tried in the district court under the "substantial evidence rule", which requires a court to approve an administrative agency's decision if there is any substantial evidence to support it. This was a *"de novo"* trial in which the court was free to make and obviously did make its own independent findings regardless of the findings or judgment of the Board.

Appellants say that the Ordinance is invalid because it provides standards for the judgment which are too broad, vague, uncertain and indefinite to permit of enforcement or to give fair notice of the type of films which may be subject to classification. We see no such infirmity in the Ordinance. In Subsection (f) of Section 46A-1 the Ordinance sets definite standards for classification. Absolute precision is not required. What is required and what we think the Ordinance affords is a sufficiently definite warning of the standards which are to guide the Board and the courts in classifying films. As was said in Roth v. United States, 354 U.S. 476, 1 L.Ed.2d 1498 (at page 1510), 77 S.Ct. 1304:

> "Many decisions have recognized that these terms of obscenity statutes are not precise. *This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process.* '. . . The Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. . . .' United States v. Petrillo, 332

US 1, 7, 8, 91 L ed 1877, 1883, 67 S Ct 1538. These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark '. . . boundaries sufficiently distinct for judges and juries fairly to administer the law. . . . That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous . . .'" (Emphasis ours.)

[fol. 200] Appellants further say the Ordinance is invalid because it involves a contemporary community standard of a local community only, the City of Dallas, and not the State of Texas or the United States. Again we cannot agree with appellants. To regulate to a limited extent the portrayal to children under the age of sixteen years of sexual promiscuity as acceptable is not to apply merely a local community standard. It is to apply a contemporary national standard.

Appellants contend that to support the validity of the Ordinance or any action taken under its terms the City must prove that a film classified "not suitable for young persons" must pass three tests. We quote from the brief of the distributor, appellant United Artists Corporation:

> "1. It must deal with sex in a manner appealing to the prurient interest, judged by the average person, applying contemporary community standards, and considering its dominant theme as a whole. Roth v. United States, 344 U.S. 476, 1 L.ed.2d 1498 (1957); and, 2. It must be patently offensive—so offensive on its face as to affront community standards of decency. Manual Enterprises, Inc. v. Day, 370 U.S. 478, 8 L.ed. 2d 639 (1962); and, 3. It must be utterly without redeeming value; hence, the good may not be weighed against the bad. Jacobellis v. Ohio, 378 U.S. 184, 12 L.ed. 2d 793 (1964)."

We bow to the pronouncements of the Supreme Court of the United States. But we do not believe that the holdings above set out are applicable here. In all of the cited cases the court was considering enactments which sought to impose total censorship. Their effect would have been to ban completely the sale, distribution or exhibiting of the matter involved either to adults or children. The Ordinance we have before us for consideration in this case does no such thing. As we have already pointed out it does not call for total censorship in any instance. It simply applies limited regulations of the conditions under which certain classified pictures may be exhibited to children under the age of sixteen years.

If we be in error in the above holding we nevertheless hold that the Ordinance and its application in this case do not violate the constitutional provisions. We have read the evidence reproduced in the statement of facts and viewed the film "Viva Maria". The latter was exhibited for our benefit in the court room. The evidence amply supports the implied findings of the Board and the district court that the film offends in all of the particulars named under the three headings quoted in the foregoing excerpt from appellant's brief.

[fol. 201] If the three tests are to be applied in this case we think test No. 1 should be modified so that in place of the words "judged by the average person" there should be subsituted the words "judged by the average *young person*" —meaning a person under the age of sixteen years. However, we would make the same holding if test No. 1 were not so modified.

In the case of John Cleland's "Memoirs of a Woman of Pleasure" vs. Attorney General of the Commonwealth of Massachusetts decided March 21, 1966, 34 "The United States Law Week" 4236, the Supreme Court of the United States reversed a judgment of a Massachusetts court banning the above named book. The court said, "A book cannot be proscribed unless it is found to be utterly without redeeming social value." But the court then went on to say:

> "It does not necessarily follow from this reversal that a determination that 'Memoirs' is obscene * * * would be improper under all circumstances. On the premise, which we have no occasion to assess, that 'Memoirs' has the requisite prurient appeal and is patently offensive, *but has only a minimum of social value,* the circumstances of production, sale, and publicity are relevant in determining whether or not the publication and distribution of the book is constitutionally protected.". (Emphasis supplied.)

We hold that "Viva Maria" has only a minimum of social value, if any at all, as to children under the age of sixteen years. And since it is permitted to be exhibited subject only to limited regulations, it is not constitutionally protected from the terms of the Ordinance which the City seeks to apply or from the terms of the temporary injunction granted by the trial court.

Appellant United Artists Corporation, distributor, asserts that it has the same constitutional rights as the exhibitor, yet it is not mentioned in the Ordinance and was not notified of the hearings. There is no merit to this contention. United Artists Corporation does not claim that it is an exhibitor of this or any other picture. It is a distributor and there is nothing in the Ordinance to prevent distribution of the film. The Ordinance has to do with the exhibition of the film to children, not its distribution. Besides, United Artists Corporation intervened in the lawsuit and was given full opportunity to be heard. It has not been harmed.

We overrule the first six points on appeal of appellant Interstate Circuit, Inc. and all ten points of appellant United Artists Corporation.

In its seventh point appellant Interstate Circuit says [fol. 202] that under Article 527 of the Texas Penal Code the State pre-empted to regulation of motion pictures, so that a municipality may not enter the field. In its eighth to sixteenth points, inclusive, appellant complains of the

action of the court in overruling exceptions to appellee's pleadings. In its seventeenth point appellant objects to the court's failure to set forth reasons to justify the granting of the temporary injunction. In its eighteenth and nineteenth points appellant alleges that the temporary injunction was not supported by pleadings and the court misapplied the law. We have considered all these additional points and find no merit in them. They are overruled.

Justice Bateman has written a concurring opinion in which he presents his views somewhat in detail. I have read his concurring opinion and agree with his views as stated by him.

The judgment of the trial court is

Affirmed.

Dixon, Chief Justice.

Delivered:

April 5, 1966.

Williams, A.J., not sitting.

[fol. 203]

CONCURRING OPINION—April 5, 1966

I concur fully with everything written by my Brother Dixon in his opinion and would like to enlarge somewhat on several of the decisions contained therein.

By its seventh point of error on appeal the appellant Interstate Circuit, Inc. says the court erred in refusing to hold that Article 527 of the Texas Penal Code pre-empted the field of regulating motion pictures, thus making invalid such attempted action by the City. The first two sections of Article 527, Penal Code of Texas, as amended in 1961, prohibit the doing of certain things, including the exhibition of obscene motion pictures, but Section 5 provides, in part, as follows:

> "The provisions of this Act shall not apply to any motion pictures produced or manufactured as com-

> mercial motion pictures which (1) have the seal under the Production Code of the Motion Picture Association of America, Inc.; or (2) legally move in interstate commerce under Federal Law; or (3) are legally imported from foreign countries into the United States and have been passed by a Customs Office of the United States Government at any port of entry."

The evidence clearly shows that the film in question is what is known as a "commercial motion picture" and that it has moved, and will probably continue to move, in interstate commerce. We think we can safely assume that such movements in interstate commerce will be "legal." Therefore, this motion picture, being one of a class specifically excepted from the effect of Article 527, is subject to regulation by the City.

Moreover, the City of Dallas, being a home rule city deriving its powers from Article 11, Section 5, of the Texas Constitution, has plenary charter powers which include the power to enact the ordinance here in question, its powers being subject only to the limitation that its charter [fol. 204] and ordinances shall contain nothing inconsistent with the Texas and Federal Constitutions or the general laws enacted by the State Legislature. City of Fort Worth v. McDonald, Tex.Civ.App., 293 SW 2d 256, wr. ref. n.r.e.; Janus Films, Inc. v. City of Forth Worth, Tex.Civ.App., 354 SW 2d 597, wr. ref. n.r.e. *per curiam,* 163 Tex. 616, 358 SW 2d 589. Home rule cities have full authority to do anything the Legislature could have authorized them to do prior to adoption of the Home-Rule Amendment, the result being that it is not necessary to look to the acts of the Legislature for grants of power to such cities, but only for limitations on their powers. Forwood v. City of Taylor, 147 Tex. 161, 214 SW 2d 282, 286; Yellow Cab Transit Co. v. Tuck, Tex.Civ.App., 115 SW 2d 455, wr. ref.

Appellants take the position that in the light of certain pronouncements by the Supreme Court the picture "Viva Maria" is entitled to protection under the First and Four-

teenth Amendments to the United States Constitution and Article 1, Section 8 of the Texas Constitution unless it can be properly said that it is obscene; and that in determining whether it is obscene three tests must be applied, to wit:

> "1. It must deal with sex in a manner appealing to the prurient interest, judged by the average person, applying contemporary community standards, and considering its dominant theme as a whole. Roth v. United States, 344 U.S. 476, 1 L. ed. 2d 1498 (1957); and,
>
> "2. It must be patently offensive—so offensive on its face as to affront community standards of decency. Manual Enterprises, Inc. v. Day, 370 U.S. 478, 8 L. ed. 2d 639 (1962); and,
>
> "3. It must be utterly without redeeming value; hence, the good may not be weighed against the bad. Jacobellis v. Ohio, 378 U.S. 184, 12 L. ed. 2d 793 (1964)."

It is my firm opinion that the constitutional guaranties of free speech may not properly be invoked to defeat the worthy purposes of the ordinance in question. The classification of a motion picture as "not suitable for young persons" is not by the terms of the ordinance made to depend on whether the motion picture is obscene, and I do not believe the United States Supreme Court intended, in Near v. Minnesota, 283 U.S. 697, 716, 75 L. Ed. 1357, 1367, or in any other case, to make such a stringent limitation on the powers of a state or city in this field.

The ordinance under examination, in defining the phrase "not suitable for young persons," does not employ the words "obscene" or "obscenity." The portrayal of sexual promiscuity in a motion picture may be accomplished with such finesse, or in such a subtle manner, that many would not consider it obscene; yet, by its very adroitness or subt- [fol. 205] lety promiscuity would be made to appear to a young person to be highly desirable or praiseworthy and acceptable or commonly accepted. Conveying to young per-

sons the idea that to be able to enjoy the pleasures of sexual gratification without being burdened with any accompanying responsibility or commitment, and with no retributive consequences, or even the slightest remorse, is acceptable behavior according to accepted standards of the American community, would in my opinion have a much more pernicious effect on the morals of the community than mere obscenities. To say that a community is powerless to protect itself and its youth from such damage because of the constitutional safeguards of free speech is to my mind unconscionable and unacceptable.

We are also asked to dissolve the temporary injunction because the order does not contain a recitation of the judge's reasons for issuing the same, as required by Rule 683, T.R.C.P. It is true that this order merely recites that all parties were represented by attorneys and in person, that they announced ready for trial and that the court, after hearing the testimony and argument of counsel, and after having fully considered the same, together with the viewing in person of the motion picture "Viva Maria", is of the opinion and finds that the appellee is entitled to a temporary injunction. The order then proceeds to grant the temporary injunction. It is also true that several Texas cases have held that this requirement of Rule 683 is mandatory and that the omission of the reasons for granting the injunction is fatal and requires reversal. Miller v. State, Tex.Civ.App., 305 SW 2d 663, no wr. hist.; Northcutt v. Waren, Tex.Civ.App., 326 SW 2d 10, wr. ref. n.r.e.; City of Houston v. Rose, Tex.Civ.App., 361 SW 2d 477, no wr. hist.

In Miller v. State, *supra*, the temporary injunction had been granted without notice to the defendant and without a hearing. There was neither pleading nor evidence that irreparable wrong, damage or injury was imminently threatened. The order did not state the reasons for its issuance. For all of these reasons the order was reversed and remanded.

In Northcutt v. Waren, *supra*, there were also additional substantial grounds for reversal.

In City of Houston v. Rose, *supra,* although the failure to state the reasons for the injunction seems to have been [fol. 206] the only ground on which the order was reversed, it was pointed out in the opinion that in several cases it had been held that the failure to set forth the reasons for granting a temporary injunction would not require a reversal "where the record affirmatively shows that no harm resulted."

It seems to be well settled by the following authorities that Rule 683 does not require a reversal when the record "affirmatively shows that no harm resulted." 31 Tex.Jur.2d, Injunctions, § 157, p. 274; O'Daniel v. Libal, Tex.Civ.App., 196 SW 2d 211, no wr. hist.; Gonzalez v. Rodriguez, Tex. Civ.App., 250 SW 2d 253, no wr. hist.; Rothermel v. Goodrich, Tex.Civ.App., 292 SW 2d 882, 884; Payton v. Hurst, etc. Clinic, Tex.Civ.App., 318 SW 2d 726, wr. ref. n.r.e. See also Transport Co. of Texas v. Robertson Transports, Inc., 152 Tex. 551, 261 SW 2d 549, and Garcia v. Sun Oil Co., Tex.Civ.App., 300 SW 2d 724, 735, wr. ref. n.r.e.

As pointed out in O'Daniel v. Libal, *supra,* "The purpose of the rule above referred to is to inform a party just what he is enjoined from doing and the reasons why he is so enjoined." It was also pointed out in that opinion that the application for temporary injunction was set down for hearing and that the appellant filed his answer, that both parties introduced several witnesses, some twenty witnesses testifying at the hearing, and that "the main and sole inquiry" was whether or not the act sought to be enjoined had or would result in a nuisance; that the appellant was familiar with the prayer of appellee's petition, had heard the statement of the court when he pronounced the judgment and that there could be "no doubt but what appellant knew what he was enjoined from doing and the reasons why."

With slight exception, the same may be said of the case at bar. Without further lengthening this opinion by reciting the evidence and the statements of the trial judge at the time he announced his decision in the presence of counsel for all parties, I would simply state that this record

does affirmatively show that no harm resulted from the failure of the judge to recite specifically in his order the reasons why he granted the temporary injunction. Certainly, it will not be argued that such omission probably caused the rendition of an improper judgment or probably prevented appellants from making a proper presentation of the case to this court. Rule 434, T.R.C.P.

Appellants and appellee are each asserting substantive [fol. 207] rights under Federal law. Appellants say the film in question is protected under the United States Constitution, while appellee asserts that the exercise of its substantive right to regulate the exhibition of the film is within the bounds of that same Constitution. Yet, we are asked to reverse this case on a purely technical, procedural rule. This we are in effect prohibited from doing by the Supreme Court of the United States in Arnold v. Panhandle & Santa Fe Ry. Co., 353 U.S. 360, 77 S.Ct. 840, 1 L. Ed. 2d 889, wherein the court said that "* * * the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

Rule 683, T.R.C.P., under discussion here, is purely procedural and does not involve any substantive rights of the parties. It cannot be invoked to deny the parties, appellants and appellee, of their rights under the Constitution of the United States. For this additional reason the point is overruled.

I am fully persuaded that the temporary injunction was properly granted and that it is our duty to affirm.

Bateman, Associate Justice.

Delivered:

April 5, 1966.

[fol. 208] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 209]

IN THE COURT OF CIVIL APPEALS

FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

16773

INTERSTATE CIRCUIT, INC., et al.,

vs.

CITY OF DALLAS.

From District Court of Dallas County

JUDGMENT—Tuesday, April 5, 1966

Opinion of the Court delivered by Mr. Dixon, Chief Justice.

Concurring opinion delivered by Mr. Bateman, Associate Justice.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is in the opinion of the Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellee, City of Dallas, have and recover of and from the appellants, Interstate Circuit, Incorporated, and United Artists Corporation, and from the cash deposit in the hands of the District Clerk of Dallas County, Texas, made in lieu of an appeal bond, all costs in this behalf incurred or expended for which execution may issue, and that this decision be certified below for observance.

Mr. Williams, Associate Justice, not sitting.

IN THE COURT OF CIVIL APPEALS

FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

18085

16773

INTERSTATE CIRCUIT, INC., et al.,

VS.

CITY OF DALLAS.

ORDER OVERRULING MOTION FOR REHEARING—
Monday, April 25, 1966

This day came on to be heard the motion of appellant Interstate Circuit, Incorporated, for rehearing of this cause, and the same being inspected, it is considered, adjudged and ordered that the motion be overruled.

IN THE COURT OF CIVIL APPEALS

FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS

18094

16773

INTERSTATE CIRCUIT, INC., et al.,

VS.

CITY OF DALLAS.

ORDER OVERRULING MOTION FOR REHEARING—
Monday, April 25, 1966

This day came on to be heard the motion of appellant United Artists Corporation for rehearing of this cause, and

the same being inspected, it is considered, adjudged and ordered that the motion be overruled.

[fol. 210] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 211]

IN THE SUPREME COURT OF TEXAS

No. A-11,490

INTERSTATE CIRCUIT, INC., ET AL., Petitioners,

v.

CITY OF DALLAS, Respondent.

PETITIONER'S MOTION TO ADVANCE—
Filed June 6, 1966

To the Honorable Supreme Court of Texas:

Now comes the Petitioner, Interstate Circuit, Inc., joined by the Respondent, City of Dallas, and moves the Court to [fol. 212] advance this case for consideration on the pending Application for Writ of Error for the following reasons:

I.

The suit involves an appeal from a temporary injunction.

II.

The City of Dallas is enforcing a classification system on motion pictures. For this system to be legal, all parties recognize that a prompt judicial review is necessary.

[File endorsement omitted]

III.

By seeing this advancement on the docket, the Petitioner does not concede that the classification system, and the procedures relating thereto, provide prompt judicial review; neither does the City of Dallas concede that prompt judicial review is denied if this motion is not granted.

IV.

This case is one of several arising under the terms of the ordinance. It is important for the parties here, and for the lower courts that will deal with these other cases, both at the trial and appellate levels, to have the issues of this case determined as soon as possible, if review is to be granted.

[fol. 213]

V.

Respondent, by joining here, does not concede that Writ of Error should be granted, but simply requests that the decision on the Application be determined as soon as possible.

VI.

In the event that the Application for Writ of Error is granted, this Petitioner and the Respondent request that the submission of this case be set at the Court's earliest convenience so that a decision can be reached on this matter.

Wherefore, Premises Considered, This Petitioner, Interstate Circuit, Inc., and the Respondent, City of Dallas, pray that the Court consider the Application for Writ of Error at the earliest convenience of this Court; and, further, that if the Writ of Error be granted, that the case be set for submission at the earliest convenience of the Court.

Respectfully submitted,

Tobolowsky, Hartt, Schlinger & Blalock, By Grover Hartt, Jr., 3525 Southland Center, Dallas, Texas 75201, Riverside 2-9205, Attorneys for Petitioner, Interstate Circuit, Inc.

[fol. 214] N. Alex Bickley, 501 City Hall, Dallas, Texas, Riverside 8-9711, Attorney for Respondent, City of Dallas.

Proof of Service (omitted in printing).

[fol. 215] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 216]

IN THE SUPREME COURT OF TEXAS

No. A-11,490

INTERSTATE CIRCUIT, INC., et al.,

vs.

CITY OF DALLAS.

From Dallas County, Fifth District

ORDER REFUSING THE APPLICATIONS FOR WRITS OF ERROR—
July 27, 1966

Application of Interstate Circuit, Inc. and application of United Artists Corporation for writs of error to the Court of Civil Appeals for the Fifth Supreme Judicial District having been duly considered, and the Court having determined that the applications present no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said applications be, and hereby are, refused.

It is further ordered that applicants, Interstate Circuit, Inc., and United Artists Corporation pay all costs incurred on their respective applications.

[fol. 217] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 218]

IN THE SUPREME COURT OF TEXAS

No. A-11,490

INTERSTATE CIRCUIT, INC., ET AL., Petitioners,

v.

THE CITY OF DALLAS, Respondent.

SUPPLEMENTAL MOTION FOR REHEARING—
Filed September 30, 1966

(omitted in printing)

• • • • • • • •

[fol. 219]

ATTACHMENT TO SUPPLEMENTAL MOTION FOR REHEARING

(See opposite) ☞

CHART OF TEN CASES BEFORE AND AFTER INTERSTATE CIRCUIT, INC., ET AL. V. CITY OF DALLAS, CAUSE NO. A-11490

1. No.	2. S. Ct. No.	3. Style/Southwest Citation	4. Nature of Suit	5. Filed in S. Ct.	6. S. Ct. Action	7. Date	8. Lapsed Time Between Filing	9. Set for Submission	10. Motion for Rehearing Overruled
1.	A-11480	Phillips et al. v. Parrish et al., 401 S. W. 2d 347	Declaratory Judgment	5-19-66	Ref. N. R. E.	7-27-66	69 Days		
2.	A-11481	Roberts et ux. v. Hodges, 401 S. W. 2d 332	Suit on Okla. Judgment	5-23-66	Ref. N. R. E.	6-29-66	37 Days		
3.	A-11482	Petty v. Texas Employers Insurance Association, 401 S. W. 2d 678	Workmen's Compensation	5-23-66	Ref. N. R. E.	6-22-66	30 Days		7-20-66
4.	A-11483	Head v. City of Shore Acres, et al., 401 S. W. 2d 703	Compel Issuance of Permit	5-23-66	Ref. N. R. E.	6-15-66	23 Days		
5.	A-11484	Walton et al. v. Hardy, 401 S. W. 2d 614	Partition Suit	5-23-66	Ref. N. R. E.	6-15-66	23 Days		7-13-66
6.	A-11485	Flores et al. v. Great American Insurance Co., 401 S. W. 2d 690	Workmen's Compensation	5-23-66	Ref. N. R. E.	7-27-66	65 Days		
7.	A-11486	Universal Underwriters Ins. Co. v. Bounds, 401 S. W. 2d 865	Workmen's Compensation	5-23-66	Ref. N. R. E.	6-29-66	37 Days		
8.	A-11487	Moulton et al. v. Alamo Ambulance Service, 402 S. W. 2d 200	Personal Injury	5-23-66	Granted	7-27-66	65 Days	10-19-66	
9.	A-11488	Sanders v. Dunlap, 401 S. W. 2d 367	Trespass to Try Title	5-23-66	Ref. N. R. E.	6-15-66	23 Days		
10.	A-11489	Forristall et al. v. Federal Insurance Co., et al., 401 S. W. 2d 285	Declaratory Judgment	5-23-66	Ref. N. R. E.	7-27-66	65 Days		

[fol. 220]

1. No.	2. S. Ct. No.	3. Style/Southwest Citation	4. Nature of Suit	5. Filed in S. Ct.	6. S. Ct. Action	7. Date	8. Lapsed Time Between Filing	9. Set for Submission	10. Motion for Rehearing Overruled
11.	A-11490	Interstate Circuit, Inc., et al. v. City of Dallas, 402 S.W.2d 770	Temporary Injunction - Free Speech	5-23-66	Ref. N.R.E.	7-27-66	65 Days		Pending
12.	A-11491	Texas & Pacific Railway Co. v. ~~Hardgrave, et al.~~ McCleery, 401 S.W.2d 693	Personal Injury	5-23-66	Granted	7-27-66	65 Days	10-26-66	
13.	A-11492	Pierce v. Ford Motor Company, 401 S.W.2d 355	Damage - Warranty Suit	5-24-66	Dismissed	6-22-66	29 Days		
14.	A-11493	National Life & Accident Insurance Co. v. Morris, 402 S.W.2d 297	Insurance Policy	5-24-66	Ref. N.R.E.	6-29-66	36 Days		
15.	A-11494	Busse v. Sovereign Life Ins. Co., 401 S.W.2d 926	Insurance - Personal Injury	5-25-66	Ref. N.R.E.	6-29-66	35 Days		7-20-66
16.	A-11495	State v. Nelson et vir., 401 S.W. 2d 880	Condemnation Proceeding	5-26-66	Ref. N.R.E.	7-27-66	62 Days		
17.	A-11496	Barrie et vir. v. Costello et vir., 401 S.W.2d 707	Habeas Corpus Child Custody	5-27-66	Ref. N.R.E.	7-27-66	61 Days		
18.	A-11497	Roark v. Texas Municipal Retirement System, 401 S.W.2d 913	Require Pension Payments	5-27-66	Ref. N.R.E.	7-27-66	61 Days		
19.	A-11498	International Motorist Assn. v. Aguilar, 402 S.W.2d 516	Recover Attorney Fees	5-30-66	Still Pending				
20.	A-11499	Waco Transit Corp. et al. v. Transport Workers Union of America, Local No. 276 et al., 402 S.W.2d 253	Arbitration-Collective Bargaining	5-31-66	Ref. N.R.E.	7-27-66	57 Days		

[fol. 221]

1. No.	2. S. Ct. No.	3. Style/Southwest Citation	4. Nature of Suit	5. Filed in S. Ct.	6. S. Ct. Action	7. Date	8. Lapsed Time Between Filing	9. Set for Submission	10. Motion for Rehearing Overruled
21.	A-11500	City of Houston v. Fore, 401 S.W.2d 921	Street Paving Assessment	5-31-66	Granted	7-27-66	57 Days	10-26-66	

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, GEO. H. TEMPLIN, Clerk of The Supreme Court of Texas, the same being a court of record, in the performance of the functions of my office, hereby certify that I am the lawful possessor and keeper and have legal custody of the papers and records of said Court, and I further certify and attest that the above and foregoing chart, consisting of three (3) pages, including the page to which this certificate is attached, accurately and correctly shows the court number and style of the respective case, the nature of the suit, the date of the filing of application for writ of error in The Supreme Court of Texas, the action by the court, and the date thereof, and for those cases where a writ of error was granted, the date the same was set for submission, and where a motion for rehearing was overruled, the date of that action. This information shown in Columns 2, 3, ~~4~~, 5, 6, 7, 9, and 10, has been verified by an examination of the records of each of the respective cases on file and of record in my office.

(SEAL)

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of said Court, at my office in the City of Austin in the County of Travis, State of Texas, this 9th day of September, 1966.

/s/ Geo. R. Templin
Clerk of The Supreme Court of Texas
By /s/ Garson R. Jackson
Deputy

[fol. 222]

IN THE SUPREME COURT OF TEXAS

No. A-11,490

INTERSTATE CIRCUIT, INC., et al.,

vs.

CITY OF DALLAS.

From Dallas County, Fifth District

ORDER OVERRULING THE MOTIONS FOR REHEARING—
October 19, 1966

Motions of petitioners for rehearing of their applications for writs of error having been duly considered, it is ordered that said motions be, and hereby are, overruled.

[fol. 223]

IN THE COURT OF CIVIL APPEALS FOR THE
FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS
SITTING AT DALLAS
Cause No. 16773

INTERSTATE CIRCUIT, INC. ET. AL., Appellants,

vs.

CITY OF DALLAS, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 11, 1967

I. Notice is hereby given that Interstate Circuit, Inc., the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Civil Appeals For The Supreme Judicial District of Texas Sitting at Dallas affirming judgment of the trial court entered in this action on April 5, 1966.

This Appeal is taken pursuant to 28 U.S. Code §1257(2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of pleadings filed in the District Court containing, among other things, the following:

a. Plaintiff's Original Petition.

b. Answer in Intervention of United Artists Corporation.

[File endorsement omitted]

c. Defendant's Original Answer.

d. Trial Amendment (by the Plaintiff).

e. Motion to Strike Answer in Intervention.

[fol. 224]

f. Plaintiff's First Supplemental Petition.

g. Temporary Injunction.

h. Motion to Send Original Exhibits as part of Record to Court of Civil Appeals.

i. Order to Send Exhibits in Original Form.

2. Supplemental Transcript.

3. Statement of Facts.

4. Opinion and Concurring Opinion of the Court of Civil Appeals.

5. Judgment of the Court of Civil Appeals.

6. Motions for Rehearing.

7. Order Overruling Motion for Rehearing.

8. Petitions for Writ of Error.*

9. Transmittal letter to Honorable George H. Templin, Clerk of the Supreme Court of Texas from Justin G. Burt.

10. Motion to Advance Submission to Supreme Court.*

11. Order of the Supreme Court of Texas refusing Petition for Writ of Error.*

12. Motion for Rehearing in Supreme Court by Interstate Circuit, Inc.*

13. Motion for Rehearing by United Artists Corporation, Inc.*

14. Reply to Motions for Rehearing.*

---

* These items are furnished as a separate certificate from the Clerk of the Supreme Court of Texas.

15. Order of the Supreme Court of Texas overruling Motions for Rehearing on Petitions for Writ of Error.*

16. Chart of Ten Cases Before and After *Interstate Circuit Inc., Et Al.* v. *City of Dallas,* Cause No. A-11490, certified by George H. Templin, Clerk of the Supreme Court of Texas.

17. This notice of Appeal.

[fol. 225] III. The following questions are presented by this Appeal:

1. Whether Ordinance 11284 is unconstitutional because it does not guarantee a prompt final judicial decision to review actions of the Dallas Motion Picture Classification Board in classifying a motion picture as "not suitable for young persons"?

2. Whether Ordinance 11284 is unconstitutional because it prohibits the free exhibition of motion pictures on standards that are vague and ambiguous instead of limiting the restraint on free exhibition to those pictures which are obscene as that term has been defined by this Court?

3. Whether the Dallas Motion Picture Classification Board and the lower courts each applied unconstitutional standards in classifying the motion picture *Viva Maria* as "not suitable for young persons"? As sub-parts of this question, (a) it should be determined whether members of the Dallas Motion Picture Classification Board use the term "sacrilegeous" as a basis for determining that the picture was "not suitable for young persons"; (b) whether the members of the Classification Board used the geographic area of the City of Dallas in determining the community standard; and, (c) whether the members of the Classification Board based their conclusion that the

---

* These items are furnished as a separate certificate from the Clerk of the Supreme Court of Texas.

Picture was not suitable upon a few isolated scenes and not on the dominant theme of the picture considered as a whole.

Tobolowsky, Hartt, Schlinger & Blalock, by Grover Hartt, Jr. and By Edwin Tobolowsky, 3525 Southland Center, Dallas, Texas, Attorneys for Interstate Circuit, Inc.

[fol. 226] Proof of Service (omitted in printing).

[fol. 227] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 228]

IN THE COURT OF CIVIL APPEALS FOR THE FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS AT DALLAS

No. 16,773

INTERSTATE CIRCUIT, INC., ET AL, Appellants,

v.

CITY OF DALLAS, Appellee.

NOTICE OF APPEAL OF UNITED ARTISTS CORPORATION TO THE SUPREME COURT OF THE UNITED STATES—Filed January 16, 1967

I.

Notice is hereby given that United Artists Corporation, Intervenor in the trial court and an Appellant in the Court of Civil Appeals, hereby appeals to the Supreme Court

[File endorsement omitted]

of the United States from the final Judgment of the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas at Dallas entered on April 5, 1966, which Judgment was denied review by the Supreme Court of Texas finally on October 19, 1966.

This appeal is taken pursuant to 28 U.S. Code #1257(2).

II.

The Clerk of said Court will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Rejoinder of Petitioner United Artists Corporation to Respondent City of Dallas' Brief in Reply to Application for Writ of Error;

B. Supplemental Motion for Rehearing of Application of United Artists Corporation for Writ of Error; and,

[fol. 229] C. This Notice of Appeal.

III.

The following questions are presented by this appeal:

A. Whether the Dallas Motion Picture Classification Ordinance (No. 11,284) is unconstitutional under the First Amendment to the United States Constitution, applicable to the states under the Fourteenth Amendment thereto, by restricting freedom of expression on grounds other than obscenity;

B. Whether the vague, over-broad and indefinite standards for classification of a motion picture as "not suitable for young persons" contained in the Dallas Motion Picture Classification Ordinance (No. 11,284) render said Ordinance unconstitutional under the due

process provisions of the Fourteenth Amendment to the United States Constitution;

C. Whether the Dallas Motion Picture Classification Ordinance (No. 11,284), establishing, as it does, a prior restraint on freedom of expression, contains adequate procedural safeguards to avoid unconstitutionality under the due process provisions of the Fourteenth Amendment and the freedom of expression provisions of the First Amendment to the United States Constitution;

D. Whether exhibition of the motion picture "VIVA MARIA" has been restricted, despite the holding that it has a "minimum of social value" for young persons, by the application of unconstitutional standards in conflict with the First Amendment to the United States Constitution; and,

E. Whether the procedural safeguards of the Dallas Motion Picture Classification Ordinance (No. 11,284) were constitutionally applied under the First and Fourteenth Amendments to the United States Constitution in restricting exhibition of the motion picture "VIVA MARIA."

[fol. 230] Dated this 16th day of January, 1967.

Paul Carrington, Dan McElroy, 1700 Mercantile Bank Building, Dallas, Texas 75201.

Of Counsel:

Carrington, Johnson & Stephens, 1700 Mercantile Bank Building, Dallas, Texas 75201.

Proof of Service (omitted in printing).

[fol. 231] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 232]

SUPREME COURT OF THE UNITED STATES

Nos. 1109 and 1155, October Term, 1966

INTERSTATE CIRCUIT, INC., Appellant,

v.

CITY OF DALLAS, and

UNITED ARTISTS CORPORATION, Appellant,

v.

CITY OF DALLAS.

Appeals from the Court of Civil Appeals of the State of Texas, Fifth Supreme Judicial District.

ORDER NOTING PROBABLE JURISDICTION—May 15, 1967

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allotted for oral argument.